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Rules, Regulations, Orders

TITLE 7—AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

[Order 22, Amendment 1]

PART 922—AMENDMENT NO. 1 TO THE ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CINCINNATI, OHIO, MARKETING AREA*

Sec.

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Whereas, H. A. Wallace, Secretary of Agriculture of the United States of America, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended (48 Stat. 31), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), issued, effective May 1, 1938, Order No. 22,[1] regulating the handling of milk in the Cincinnati, Ohio, marketing area, and issued, effective May 13, 1939, Order No. 22, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area; and

Whereas, the Secretary, having reason to believe that an amendment to said Order No. 22, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area, would tend to effectuate the declared policy of said act, gave, on the 22d day of September 1939,[2] notice of a public hearing to be held at Cincinnati, Ohio, which hearing was held on the 28th and 29th days of September 1939 on a proposal to amend said Order No. 22, as amended, and at said times and place conducted public hearings at which all interested parties were afforded an opportunity to be heard on the proposal to amend said Order No. 22, as amended; and

Whereas, after such hearing handlers of more than fifty percent of the volume of milk covered by such order, as amended, which is marketed within the Cincinnati, Ohio, marketing area, refused or failed to sign a tentatively approved marketing agreement, as amended, relating to milk; and

Whereas, the requirements of section 8c (9) of said act have been complied with; and

Whereas, the Secretary finds, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to the findings made upon the evidence introduced that the hearing on said order, and at the hearing on said order, as amended, and being in addition to the other findings made prior to or at the time of the original issuance of said order and of said order, as amended (all of which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

§ 922.0 *Findings.* 1. That the prices calculated to give milk handled in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to section 2 and section 8e of said act, are not reasonable in view of the prices of feeds, the available supplies of feeds, and other economic conditions which affect the market supply of and the demand for milk, and that the minimum prices set forth in this amendment to said order, as amended, are such prices as will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the other provisions of this amendment to said order, as amended, are necessary for the more effective administration of said order, as amended;

3. That the order, as amended, and as hereby amended, regulates the handling of milk in the same manner as, and is

*Amendments to Section 922.0, Sec. 922.1, Sec. 922.3, Sec. 922.4, Sec. 922.5, Sec. 922.6, Sec. 922.7, and Sec. 922.8 issued under the authority contained in 48 Stat. 31 (1933), 7 U.S.C. § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U.S.C. § 601 et seq. (Supp. IV 1938).

[1] 4 F.R. 1978 DI.

[2] 4 F.R. 4039 DI.

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FEDERAL REGISTER

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applicable only to handlers specified in the tentatively approved marketing agreement, as amended, upon which a hearing has been held; and

4. That the issuance of this amendment to the order, as amended, and all of its terms and conditions, as so amended, will tend to effectuate the declared policy of the act:

Now, therefore, The Secretary of Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, hereby orders that the order, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area be and it is hereby amended as follows:

1. Delete Sec. 922.1 (a) (4) and substitute therefor the following:

(4) The term "producer" means any person who produces milk which is received at the plant of a handler from which milk is disposed of in the marketing area: *Provided*, That if such producer has not regularly distributed milk in the marketing area or has not disposed of milk to a handler for a period of 30 days prior to May 1, 1938, but begins the regular delivery of milk to a handler, he shall be known as a "new producer" for a period beginning with the date of his first delivery of milk and including the first 2 full calendar months of regular delivery following the date of first delivery to a handler, after which he shall be known as a producer.

2. Add to Sec. 922.1 (a) (5) the following:

This definition shall not be deemed to include any person from whom emergency milk is received.

3. Add as Sec. 922.1 (a) (9) the following:

(9) The term "emergency milk" means milk received by a handler from sources other than producers or new producers under a permit to receive such milk issued to him by the proper health authorities.

4. Add as Sec. 922.3 (a) (5) the following:

(5) On or before the day such handler receives emergency milk, his intention to receive such milk.

5. Add as Sec. 922.3 (a) (6) the following:

(6) On or before the 10th day after the end of each delivery period, the receipts of emergency milk, as follows: (a) the amount of such milk, (b) the date or dates upon which such milk was received during the delivery period, (c) the plant from which such milk was shipped, (d) the price per hundredweight paid, or to be paid, for such milk, (e) the utilization of such milk, and (f) such other information with respect thereto as the market administrator may request.

6. Delete Sec. 922.4 (d) (1) and substitute therefor the following:

(1) Determine the total pounds of butterfat received as follows: (a) multiply the weight of the milk received from producers and new producers by its average butterfat test, (b) multiply the weight of the milk produced by him, if any, by its average butterfat test, (c) multiply the weight of the milk received from handlers, if any, by its average butterfat test, (d) multiply the weight of emergency milk, if any, by its average butterfat test, and (e) add together the resulting amounts.

7. Add as Sec. 922.4 (d) (5) (iii) the following:

(iii) In the case of a handler who has received emergency milk during the delivery period, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat contained in emergency milk received.

8. Delete Sec. 922.5 (a) and substitute therefor the following:

(a) *Class prices.* Each handler shall pay at the time and in the manner set forth in Sec. 922.7 not less than the following prices for milk received at such handler's plant on the basis of milk of 4 percent butterfat content as follows:

Class I milk—$2.75 per hundredweight during delivery periods prior to May 1, 1940, and thereafter $2.35 per hundredweight: *Provided*, That with respect to Class I milk disposed of by the handler through a recognized relief agency or under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $2.15 per hundredweight during delivery periods prior to May 1, 1940, and thereafter $1.95 per hundredweight.

Class II milk—$1.80 per hundredweight.

Class III milk—The price per hundredweight which shall be calculated by the market administrator as follows: multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 30 percent thereof: *Provided*, That for Class III milk disposed of as butter the price

shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, plus 2 cents, multiplied by 4. In the event that the total receipts of butterfat, excepting that contained in emergency milk, by all handlers from producers and new producers during the delivery period, as ascertained by the market administrator from reports submitted by handlers pursuant to Sec. 922.3 (a), are less than 125 percent of the total quantity of butterfat disposed of in Class I milk and Class II milk by such handlers, computed pursuant to subparagraphs (2) and (3) of paragraph (d) of Sec. 922.4, the price last stated shall apply to a quantity of milk disposed of as butter but not to exceed 10 percent of the total quantity of milk received by the handler from producers and new producers, which was disposed of as Class I milk and Class II milk, computed pursuant to Sec. 922.4 (e) (1).

9. Delete Sec. 922.6 (a) (3) and substitute therefor the following:

(3) Subtract, if the average butterfat test of milk of producers is greater than 4 percent, or add, if the average butterfat test of such milk is less than 4 percent, an amount computed as follows: multiply the total hundredweight of milk by the variance of such average butterfat test from 4 percent, and multiply the resulting amount by $0.40 if the average price of butter as described in Sec. 922.5 (a) was more than $0.30, or by $0.30 if such average price of butter was $0.30 or less.

10. Delete Sec. 922.7 and substitute therefor the following:

§ 922.7 *Payment for milk*—(a) *Payment to producers and new producers.* On or before the 5th day after the end of each delivery period, each handler shall pay, with respect to all milk received during the delivery period, $1.00 per hundredweight of milk to each producer and $0.50 per hundredweight of milk to each new producer: *Provided,* That in the event the total amount of the deductions and charges authorized by any producer or new producer against payments due such producer or new producer for the delivery period next preceding is greater than the payment computed for such producer or new producer pursuant to Sec. 922.8 (a) with respect to milk received from such producer or new producer during such preceding delivery period, the handler may deduct from the payment required by this paragraph a sum equal to the difference between such amounts.

(b) *Payment to producer-settlement fund.* On or before the 17th day after the end of each delivery period, each handler shall pay to the market administrator the amount of money which represents the value of milk billed to him for such delivery period, pursuant to Sec. 922.5 (d), less the amount paid out to each producer and new producer in accordance with paragraph (a) of this section, and less the amount of the deductions and charges authorized by such producer or new producer which are itemized on the handler's producer pay roll: *Provided,* That in the calculation of the total amount of such deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer or new producer shall not be greater than an amount which, when added to the payment made to such producer or new producer in accordance with paragraph (a) of this section (inclusive of the deductions and charges authorized by paragraph (a) of this section), will not exceed the total value of the milk received from such producer or new producer. The market administrator shall maintain a separate fund, known as the producer-settlement fund, in which he shall deposit all payments of handlers received pursuant to this paragraph.

11. Delete Sec. 922.8 (a) and substitute therefor the following:

§ 922.8 *Payments to producers from producer-settlement fund*—(a) *Calculation of payments for each producer and new producer.* For each delivery period the market administrator shall calculate the payment due each producer and new producer from whom milk was received during such delivery period by a handler who paid into the producer-settlement fund in accordance with Sec. 922.7, as follows:

(1) Multiply the hundredweight of milk received from each producer by the uniform price computed in accordance with Sec. 922.6 (a): *Provided,* That if such milk was of an average butterfat content other than 4 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4 percent, 4 cents per hundredweight when the average price of butter as described in Sec. 922.5 (a) was more than 30 cents, or 3 cents per hundredweight when such average price of butter was 30 cents or less;

(2) Multiply the total hundredweight of milk received from each new producer during said delivery period by the price for Class III milk not disposed of as butter, as provided in Sec. 922.5 (a): *Provided,* That if such milk was of an average butterfat content other than 4 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4 percent, an amount per hundredweight equal to 1/40 of the price for Class III milk not disposed of as butter;

(3) Subtract, in each case, the amount of the advance payment made pursuant to Sec. 922.7 (a), the charges and the deductions, if any, which are made pursuant to Sec. 922.7 (b).

Now, therefore, H. A. Wallace, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, does hereby execute in duplicate and issue this amendment to the order, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 21st day of November 1939, and declares this amendment to be effective on and after the 24th day of November 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-4307; Filed, November 21, 1939; 12:52 p. m.]

TITLE 10—ARMY: WAR DEPARTMENT

CHAPTER VII—PERSONNEL

PART 73—APPOINTMENT OF COMMISSIONED OFFICERS AND CHAPLAINS [1]

Appointment of Second Lieutenants, Regular Army, From Honor Graduates of Senior Reserve Officers' Training Corps Units

§ 73.54 *Eligibility for appointment.*

* * * * *

(b) Appointments will be confined to honor graduates in the senior Reserve Officers' Training Corps division of institutions, other than Medical, within the continental United States which offer a college degree upon satisfactory completion of four years' college work except as indicated in paragraph (c) below. The term "honor graduate" will apply to graduates of the institution in the current academic year (except as indicated in paragraphs (d) and (e) below) who are graduates of the Reserve Officers' Training Corps, citizens of the United States, who have been selected by the president of the institution for scholastic excellence and who have been designated as honor graduates by the professors of military science and tactics as possessing outstanding qualities of leadership, character, and aptitude for military service.

* * * * *

(e) Honor graduates who are ineligible for appointment in the Regular Army in the year in which they graduate in honor status because their graduation from the Reserve Officers' Training Corps is deferred pending completion of summer camp training will be permitted to compete for appointments in the Regular Army with honor graduates in the first year subsequent thereto in which they complete the prescribed summer training.

[1] These regulations amend and supplement Title 10, Chapter VII, Part 73 of the Code of Federal Regulations.

(41 Stat. 774; 10 U.S.C. 484, amended by sec. 7, Act April 3, 1939) [Par. 3, A.R. 605–7, April 26, 1939, as amended by C2, Nov. 15, 1939]

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 39–4297; Filed, November 21, 1939; 9:39 a. m.]

TITLE 16—COMMERCIAL PRACTICES

FEDERAL TRADE COMMISSION

[Docket No. 3712]

IN THE MATTER OF SUPREME MANUFACTURING COMPANY, ETC.

§ 3.66 (h) *Misbranding or mislabeling—Qualities or properties:* § 3.66 (j10) *Misbranding or mislabeling — Results:* § 3.69 (b) (12) *Misrepresenting oneself and goods—Goods—Qualities or properties:* § 3.69 (b) (15.3) *Misrepresenting oneself and goods — Goods — Results.* Representing, directly or by implication, in connection with offer, etc., in commerce, of respondent's so-called Supreme, Marvel, Marvo and Peerless product for treatment of hosiery and lingerie, or other similar products, that use of such product will prevent runs and snags in, or the rotting and fading of, hosiery and lingerie, or that through the use of such product the purchaser can save approximately 50 percent of the cost of silk hosiery and lingerie, or that use thereof strengthens the heels and toes of silk hosiery, or that hosiery treated with said product will last four or five times longer than it would without being so treated, or that the use of said product will result in any substantial increase in the wearing qualities of silk hosiery, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Supreme Manufacturing Company, etc., Docket 3712, November 7, 1939]

§ 3.66 (g) *Misbranding or mislabeling—Producer status of dealer:* § 3.69 (a) (11.7) *Misrepresenting oneself and goods—Business status, advantages or connections—Producer status of dealer:* § 3.96 (b) (5) *Using misleading name—Vendor—Producer or laboratory status of dealer.* Representing, in connection with offer, etc., in commerce, of respondent's so-called Supreme, Marvel, Marvo and Peerless product for treatment of hosiery and lingerie, or other similar products, through the use of the word "Manufacturing", or any other word or term of similar import or meaning, as part of the trade name used by the respondent, or in any other manner or through any other means or devices, that said respondent is the manufacturer of the product sold by him, unless and until such respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is manufactured by him, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Supreme Manufacturing Company, etc., Docket 3712, November 7, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING COMPANY, CARLYLE SERVICE, MARVO MANUFACTURING COMPANY, AND PEERLESS MANUFACTURING COMPANY

ORDER TO CEASE AND DESIST

This proceeding has been heard[1] by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, C. C Johnson, trading as Supreme Manufacturing Company, Carlyle Service, Marvo Manufacturing Company, and Peerless Manufacturing Company, or trading under any other name or names, his agents, servants, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the product for the treatment of hosiery and lingerie now sold and distributed by the respondent under the trade names Supreme, Marvel, Marvo and Peerless, or any other product composed of substantially the same ingredients or possessing substantially similar properties, whether sold under said names, or any other trade name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that the use of said product will prevent runs and snags in, or the rotting and fading of, hosiery and lingerie;

(2) Representing, directly or by implication, that through the use of said product the purchaser can save approximately 50% of the cost of silk hosiery and lingerie;

(3) Representing, directly or by implication, that the use of said product strengthens the heels and toes of silk hosiery, or that hosiery treated with said product will last four or five times longer than it would without being so treated, or that the use of said product will result in any substantial increase in the wearing qualities of silk hosiery;

(4) Representing, through the use of the word "manufacturing", or any other word or term of similar import or meaning, as part of the trade name used by the respondent, or in any other manner or through any other means or device, that said respondent is the manufacturer of the product sold by him, unless and until such respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is manufactured by him.

It is further ordered, That the respondent shall, within sixty days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39–4291; Filed, November 20, 1939; 1:10 p. m.]

[1] 4 F.R. 2266 DI.

[Docket No. 3719]

IN THE MATTER OF THE PERASTHMAN COMPANY, INC., ET AL.

§ 3.6 (j10) *Advertising falsely or misleadingly—History of product:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y) *Advertising falsely or misleadingly—Safety.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of "Perasthman" and "Perasthman Tablets" medicinal, or other similar medicinal, preparation, which advertisements represent, directly or through implication, that said preparation is a cure for asthma or is an effective treatment for asthma or the symptoms thereof, or that it has any therapeutic value in the treatment of asthma other than affording, in some cases, temporary relief from some of the symptoms of asthma; that it is new or sensational or that the use thereof is beneficial to all sufferers from asthma; that it is harmless or that the use thereof will assure sufferers from asthma, nights of restful sleep or days of greater comfort or will stop wheezing or other symptoms of asthma; or which advertisements fail to reveal that said preparation is not safe if used in self-medication by members of the lay public suffering from heart or kidney ailments; prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U. S. C., Supp. IV, sec. 45b) [cease and desist order, The Perasthman Company, Inc., et al., Docket 3719, November 7, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF THE PERASTHMAN COMPANY, INC., AND E. FOUGERA & COMPANY, INC., CORPORATIONS

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, The Perasthman Company, Inc., and E. Fougera & Company, Inc., corporations, their officers, agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mail or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of the medicinal preparation, containing drugs, now designated "Perasthman" and "Perasthman Tablets," or any other medicinal preparation composed of substantially similar ingredients, or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said preparation is a cure for asthma or is an effective treatment for asthma or the symptoms thereof, or that said preparation has any therapeutic value in the treatment of asthma other than affording, in some cases, temporary relief from some of the symptoms of asthma; that said preparation is new or sensational or that the use thereof is beneficial to all sufferers from asthma; that said preparationtion is harmless or that the use thereof will assure sufferers from asthma, nights of restful sleep or days of greater comfort or will stop wheezing or other symptoms of asthma; or which advertisements fail to reveal that said preparation is not safe if used in self-medication by members of the lay public suffering from heart or kidney ailments.

It is further ordered, That the respondents shall, within sixty days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary*.

[F. R. Doc. 39-4292; Filed, November 20, 1939; 1:11 p. m.]

[1] 4 F.R. 2266 DI.

[Docket No. 3664]

IN THE MATTER OF OLD MISSION TABLET COMPANY

§ 3.6 (j10) *Advertising falsely or misleadingly—History of product:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (dd10) *Advertising falsely or misleadingly—Success, use or standing.* Disseminating, etc., advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of respondent's "Old Mission Tablets" and "O-M Tablets", or other similar preparation, which advertisements represent, directly or through implication, that said preparation is identical to the preparation which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States, or that it was prepared or used by the greatest kidney and stomach specialist in the United States; that it is one of the greatest tablets offered to the public for general run down stomach condition, or that, wherever it is known, said preparation is one of the largest selling or most favored tablets for such condition; that it is an effective treatment for stomach or digestive troubles caused by costive weakened digestive system; or that it is an effective treatment for congestive stomach soreness, sick headaches, backaches, dizzy spells or gastric stomach attacks, unless such representations disclose that such effectiveness is limited to those cases wherein such conditions are caused primarily by constipation, or that one or two tablets of said preparation will ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells or gastric stomach attacks irrespective of whether such conditions are caused primarily by constipation; prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Old Mission Tablet Company, Docket 3664, November 7, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF E. W. KNOWLTON, AN INDIVIDUAL TRADING AS OLD MISSION TABLET COMPANY

ORDER TO CEASE AND DESIST

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, E. W. Knowlton, individually and trading as Old Mission Tablet Company, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondent's medicinal preparation now designated as Old Mission Tablets and O-M Tablets, or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or other names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent, directly or through implication, that said preparation is identical to the preparation which helped build up the reputation of one of the greatest stomach and kidney specialists in the United States or that said preparation was prepared or used by the greatest kidney and stomach specialist in the United States; that said preparation is one of the greatest tablets offered to the public for general run down stomach condition, or that, wherever it is known, said preparation is one of the largest selling

[1] 4 F.R. 2192 DI.

or most favored tablets for such condition; that said preparation is an effective treatment for stomach or digestive troubles caused by costive weakened digestive system; or that said preparation is an effective treatment for congestive stomach soreness, sick headaches, backaches, dizzy spells or gastric stomach attacks unless such representations disclose that such effectiveness is limited to those cases wherein such conditions are caused primarily by constipation, or that one or two tablets of said preparation will ordinarily relieve congestive stomach soreness, sick headaches, backaches, dizzy spells or gastric stomach attacks irrespective of whether such conditions are caused primarily by constipation.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-4290; Filed, November 20, 1939; 1:10 p. m.]

[Docket No. 3871]

IN THE MATTER OF MARLIN FIREARMS COMPANY

§ 3.6 (a) (22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer—Manufacturer.* Representing, in connection with sale, etc., in commerce, of razor blades, that respondent Marlin Firearms Company is the manufacturer of the razor blades which it sells, unless and until it owns and operates, or directly and absolutely controls, the factory wherein said razor blades are manufactured, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Marlin Firearms Company, Docket 3871, November 7, 1939]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 7th day of November, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

IN THE MATTER OF MARLIN FIREARMS COMPANY, A CORPORATION

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That Marlin Firearms Company, a corporation, its officers, agents and representatives, in connection with the sale and distribution of razor blades in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that Marlin Firearms Company is the manufacturer of the razor blades which it sells, unless and until it owns and operates, or directly and absolutely controls, the factory wherein said razor blades are manufactured.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 39-4313; Filed, November 21, 1939; 12:57 p. m.]

TITLE 19—CUSTOMS DUTIES

BUREAU OF CUSTOMS

[T.D. 50017]

ROCHESTER MUNICIPAL AIRPORT, ROCHESTER, NEW YORK, DESIGNATED AS AN AIRPORT OF ENTRY WITHOUT TIME LIMIT [1]

NOVEMBER 16, 1939.

To Collectors of Customs and Others Concerned:

The Rochester Municipal Airport, Rochester, New York, is hereby designated as an airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of the Air Commerce Act of 1926 (U.S.C. title 49, sec. 179 (b)), effective November 7, 1939. (Sec. 7 (b), 44 Stat. 572; 49 U.S.C. 177 (b))

[SEAL] JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-4312; Filed, November 21, 1939; 12:56 p. m.]

TITLE 22—FOREIGN RELATIONS

DEPARTMENT OF STATE

PART 55C—TRAVEL

Section 5 (a) of the Neutrality Act of 1939 regarding travel on belligerent vessels provides as follows:

SEC. 5 (a) Whenever the President shall have issued a proclamation under the authority of section 1 (a) it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of any state named in such proclamation, except in accordance with such rules and regulations as may be prescribed.

On November 6, the following regulations were prescribed in pursuance of the above provision:

American diplomatic and consular officers and their families, members of their staffs and their families, and American military and naval officers and personnel and their families may travel pursuant to orders on vessels of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa if the public service requires.

Other American citizens may travel on vessels of France,; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, *Provided, however,* That travel on or over the north Atlantic Ocean, north of 35 degrees north latitude and east of 66 degrees west longitude or on or over other waters adjacent to Europe or over the continent of Europe or adjacent islands shall not be permitted except when specifically authorized by the Secretary of State in each case.

Section 3 (a) of the Neutrality Act of 1939, regarding travel into or through combat areas provides as follows:

SEC. 3 (a) Whenever the President shall have issued a proclamation under the authority of section 1 (a), and he shall thereafter find that the protection of citizens of the United States so requires, he shall, by proclamation, define combat areas, and thereafter it shall be unlawful, except under such rules and regulations as may be prescribed, for any citizen of the United States or any American vessel to proceed into or through any such combat area. The combat areas so defined may be made to apply to surface vessels or aircraft, or both.

The President, by proclamation of November 4, 1939, entitled "Definition of Combat Areas" defined a combat area as follows:

All the navigable waters within the limits set forth hereafter.

Beginning at the intersection of the North Coast of Spain with the meridian of 2°45′ longitude west of Greenwich;

Thence due north to a point in 43°54′ north latitude;

Thence by rhumb line to a point in 45° 00′ north latitude; 20°00′ west longitude;

Thence due north to 58°00′ north latitude;

Thence by rhumb line to latitude 62° north, longitude 2° east;

Thence by rhumb line to latitude 60° north, longitude 5° east;

Thence due east to the mainland of Norway;

Thence along the coastline to Norway, Sweden, the Baltic Sea and dependent waters thereof, Germany, Denmark, the Netherlands, Belgium, France and Spain to the point of beginning.

On November 6, 1939, the following regulations relating to travel into and through combat areas were prescribed:

Holders of American passports issued or validated subsequent to September 4, 1939 for travel in Europe are hereby permitted to proceed, in accordance with the authorizations and subject to the restrictions noted on such passports, into and through any such combat area, whether by surface vessels or aircraft, or both, until further regulation. Holders of American passports, whether or not so issued or validated, presently in the combat areas defined by the proclamation of the President of the United States dated November 4, 1939, are hereby permitted to proceed into and through such combat areas in connection with travel in

[1] This document affects the tabulation in 19 CFR 4.12.

accordance with the authorizations and subject to the restrictions noted on such passports, until further regulation.

The Acting Secretary of State of the United States hereby amends 22 CFR 55C.2 of November 6, 1939,[1] to read as follows:

Other American citizens may travel on vessels of France; Germany; Poland; or the United Kingdom, India, Australia, Canada, New Zealand, and the Union of South Africa, *Provided, however,* That travel on or over the north Atlantic Ocean, north of 35 degrees north latitude and east of 66 degrees west longtitude or on or over other waters adjacent to Europe or over the continent of Europe or adjacent islands shall not be permitted except when specifically authorized by the Passport Division of the Department of State or an American Diplomatic or Consular officer abroad in each case.

and also prescribes the following regulations supplementing the regulations prescribed on November 6, 1939,[2] which supplemental regulations shall be designated as § 55C.3 (b), (c), (d), (e), and (f), under Title 22 for codification purposes.[2]

PART 55C—TRAVEL

§ 55C.3 *American nationals in combat areas*—(b) *Endorsement of passport for travel in combat areas.* American nationals may not travel on any surface vessel or aircraft into or through any area which is or may be defined as a combat area unless they possess American passports which have been endorsed as valid, as hereinafter provided, for such travel by the Passport Division of the Department of State or an American Diplomatic or Consular officer abroad.

(c) *Endorsement restricted in validity to one specific journey.* Each such endorsement shall be restricted in validity to one specific journey into or through a combat area and shall not be valid for travel on a belligerent vessel unless transportation on a neutral vessel is not reasonably available.

(d) *Endorsement on passports of United States officers and employees.* Endorsements valid for travel into or through a combat area may be placed on the passports of officers and employees of the United States, civil or military, and members of their families if the public service requires.

(e) *Endorsements for other American nationals in cases of imperative necessity.* Endorsements valid for travel into or through a combat area shall not be placed on the passports of other American nationals except in cases of imperative necessity and unless other routes of travel to destination are not reasonably available.

(f) *American nationals authorized to travel without endorsement.* The regulations § 55C.3 (b), (c), (d), (e), and (f) are not applicable to the following American nationals who are hereby authorized, under the conditions stated, to travel into or through combat areas without being in possession of American passports endorsed as valid for such travel:

(1) *Officers and enlisted personnel on board vessels of United States Navy or United States Coast Guard.* Officers and enlisted personnel on board any vessels of the United States Navy or United States Coast Guard proceeding into or through combat areas under orders or in the course of duty.

(2) *Officers and members of crew of American vessels authorized to evacuate American citizens.* Officers and members of the crew of any American vessel which, by arrangement with the appropriate authorities of the Government of the United States, may be commissioned to proceed into or through a combat area in order to evacuate citizens of the United States who are in imminent danger to their lives as a result of combat operations incident to the present war.

(3) *Officers and members of crew of American vessels under direction of American Red Cross.* Officers and members of the crew of any American vessel proceeding into or through a combat area under charter or other direction and control of the American Red Cross and under safe conduct granted by belligerent states.

(4) *Officers and members of crew of American vessels on current voyage.* Officers and members of the crew of any American vessel which in advance of a proclamation by the President, defining any area as a combat area, cleared and departed from an American or foreign port for a port or ports within the area so defined as a combat area: *Provided, however,* That the provisions of this subparagraph are limited to a current voyage so undertaken. (Secs. 3 (a), 5 (a), Public Res. 54, 76th Cong., 2d sess., approved Nov. 4, 1939; Proc. No. 2376, Nov. 4, 1939)

[SEAL] SUMNER WELLES,
Acting Secretary of State.

NOVEMBER 17, 1939.

[F. R. Doc. 39-4293; Filed, November 20, 1939; 4:18 p. m.]

[1] 4 F.R. 4509 DI.

[2] Paragraph (a) of § 55C.3 appeared in the FEDERAL REGISTER of November 8, 1939, as paragraph (1) in "Regulations under section 3 of the joint resolution of Congress approved November 4, 1939." (4 F.R. 4510 DI.)

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[Reguations 44, 1939 Edition]

PART 314—REGULATIONS RELATING TO THE TAXES ON GASOLINE, LUBRICATING OIL, AND MATCHES

TABLE OF CONTENTS

SUBPART A.—INTRODUCTORY

§ 314.0 *Scope of regulations.* These regulations apply to the excise taxes imposed by Chapter 29, Subchapter A, of the Internal Revenue Code on sales of gasoline, lubricating oil, and matches. They deal with the determination of tax liability, the computation of the tax, the manner of its application, the collection and return of tax, the imposition of penalties, and related matters.

The import taxes with respect to petroleum and derivatives imposed by Chapter 29, Subchapter B, of the Internal Revenue Code are not within the scope of these regulations. Such taxes are administered by the Bureau of Customs of the Treasury Department under other regulations.

The statutory references are to the Internal Revenue Code (53 Stat., Part 1) unless otherwise stated.*†

SUBPART B.—GENERAL PROVISIONS

Definitions

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON. The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

(2) PARTNERSHIP AND PARTNER. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) CORPORATION. The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * *

(9) UNITED STATES. The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(10) STATE. The word "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) SECRETARY. The term "Secretary" means the Secretary of the Treasury.

(12) COMMISSIONER. The term "Commissioner" means the Commissioner of Internal Revenue.

(13) COLLECTOR. The term "collector" means collector of internal revenue.

(14) TAXPAYER. The term "taxpayer" means any person subject to a tax imposed by this title.

* * * * *

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

* * * * *

SEC. 3440. DEFINITION OF SALE.

For the purposes of this chapter, the lease of an article shall be considered the sale of such article.

§ 314.1 *Meaning of terms.* As used in these regulations—

(a) The terms defined in the applicable provisions of law shall have the meaning so assigned to them.

(b) The term "manufacturer" includes producer and importer.

(c) The term "exporter" means the person named as shipper or consignor in the export bill of lading.

(d) The term "exportation" means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

(e) The term "possession of the United States" includes the Philippine Islands, the Panama Canal Zone, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, the Midway Islands, and Palmyra.

(f) The term "sale" means an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, services, or other things.

(g) The term "taxable article" means any article taxable under Chapter 29, Subchapter A, of the Internal Revenue Code.*†

Effective Period

SEC. 3415. EFFECTIVE DATE OF SUBCHAPTER.

This subchapter shall take effect on the first day of that calendar month occurring next after the enactment of this title.

SEC. 3452. (AS AMENDED BY SECTION 1 OF THE REVENUE ACT OF 1939). EXPIRATION DATE.

No sale or importation after June 30, 1941 (or after July 31, 1941, in the case of articles taxable under section 3403, relating to the tax on automobiles, etc., or section 3400, relating to the tax on tires and inner tubes), shall be taxable under this chapter.

§ 314.2 *Effective period.* The taxes on the sale of gasoline, lubricating oil, and matches became effective under Title IV of the Revenue Act of 1932 on June 21, 1932. The applicable provisions of the Revenue Act of 1932 were superseded, effective March 1, 1939, by provisions of the Internal Revenue Code.

The tax is imposed upon any sale or use prior to July 1, 1941, of gasoline, lubricating oil, or matches by the manufacturer or other person liable for tax under the provisions of section 3445 of the Internal Revenue Code irrespective of when the article was manufactured, produced, or imported.*†

Liability for Tax

[SEC. 341. SALE PRICE.]

(c) In the case of (1) a lease, (2) a contract for the sale of an article wherein it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments, or (3) a conditional sale, there shall be paid upon each payment with respect to the article that portion of the total tax which is proportionate to the portion of the total amount to be paid represented by such payment.

§ 314.3 *Liability for tax.* Each manufacturer, producer, or importer is liable for tax on any sale, lease, or use of a taxable article, whether such sale, lease, or use is made directly or through an agent, except as otherwise provided. See Subpart C and sections 314.5, 314.32, 314.33, 314.42, and 314.43.*†

§ 314.4 *When tax attaches.* In general, the tax attaches when the title to the article sold passes from the manufacturer to a purchaser.

When title passes is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the article to the purchaser or to a carrier for the purchaser.

In the case of a sale on credit, it is immaterial whether or not the purchase price is actually collected.

Where a manufacturer consigns articles to a dealer, retaining ownership in them until they are disposed of by the dealer, title does not pass and the tax does not attach until sale by the dealer. Likewise, where the relationship between a manufacturer and a dealer is that of principal and agent, title passes upon sale by the dealer, and tax thereupon attaches.

In the case of an installment sale, a conditional sale, or a lease, a proportionate part of the tax attaches on each payment. In the case of use by a manufacturer (see section 314.6), the tax attaches at the time the use begins.*†

Sales by Others Than Manufacturer, Producer, or Importer

SEC. 3445. SALES BY OTHERS THAN MANUFACTURER, PRODUCER, OR IMPORTER.

In case any person acquires from the manufacturer, producer, or importer of an article, by operation of law or as a result of any transaction not taxable under this chapter, the right to sell such article, the sale of such article by such person shall be taxable under this chapter as if made by the manufacturer, producer, or importer, and such person shall be liable for the tax.

§ 314.5 *Sales of taxable articles by a person other than the manufacturer thereof.* If the property (that is, the title or the substantial incidents of ownership) in an article is transferred from the manufacturer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of the article by the transferee is subject to the tax. The following examples are illustrative of this rule:

If a manufacturer, producer, or importer of any of the articles covered by these regulations dies, the surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, are liable for the tax on all such articles sold by them.

A receiver or trustee in bankruptcy of a manufacturer, who conducts or liquidates a business under a court order, is liable for tax on all taxable articles sold by him, regardless of whether the articles were manufactured or imported before or after he took charge of the business.

An assignee for the benefit of creditors of a manufacturer is liable for tax with respect to all taxable articles sold by him as such assignee.

If one or more members of a partnership withdraw, and the business is continued by the remaining partners, or if new partners are admitted, the new partnership so constituted will be liable for tax on all taxable articles sold by it regardless of when they were manufactured or imported.

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*Sections 314.0 to 314.66 are issued under the authority contained in section 3450 of the Internal Revenue Code, and follow the statutory provisions to which they, respectively, refer.

†The source of sections 314.0 to 314.66 is Regulations 44 (1939 Edition), approved November 20, 1939.

A corporation which results from a statutory consolidation, or a stockholder in a corporation who, after its dissolution, continues the business, is liable for tax on all taxable articles sold by it.*†

Use by Manufacturer, Producer, or Importer

SEC. 3444. USE BY MANUFACTURER, PRODUCER, OR IMPORTER.

(a) If—

(1) any person manufactures, produces, or imports an article (* * *) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article to be manufactured or produced by him which will be taxable under this chapter or sold free of tax by virtue of section 3442, relating to tax-free sales);

* * * * *

he shall be liable for tax under this chapter in the same manner as if such article was sold by him, * * *.

§ 314.6 *Tax on use by manufacturer, producer, or importer.* If a person manufactures, produces, or imports an article covered by these regulations and uses it for any purpose (other than as material in the manufacture or production of, or as a component part of, another article manufactured or produced by him which will be taxable or sold free of tax under the provisions of section 314.21 or 314.22), he shall be liable for tax with respect to the use of such article in the same manner as if it were sold by him.

The use by any person, in the operation of a business in which he is engaged, of any taxable article which has been manufactured, produced, or imported by him or his agent, makes such person liable to tax on such use. However, the tax on the use of such taxable article will not attach in cases where an individual incidentally manufactures, produces, or imports for his personal use or causes to be manufactured, produced, or imported for his personal use any taxable article.*†

Registration Generally

§ 314.7 *Registration.* Every manufacturer of articles covered by these regulations (except manufacturers or producers of gasoline or lubricating oil) and every person who as a vendee with an established place of business is engaged in selling direct to manufacturers of taxable articles, who desire to avail themselves of the privilege of purchasing such articles tax free for further manufacture, or for resale for further manufacture, in accordance with the provisions of sections 314.21 and 314.22 may be granted a certificate of registry on Form 637 upon the filing of an application for registry on Form 637–A with the collector of internal revenue for the district in which is located the principal place of business (or, if there is no principal place of business in the United States, with the collector of internal revenue at Baltimore, Md.). The application for registry must state specifically the nature of the applicant's business.

Producers or importers of gasoline and manufacturers or producers of lubricating oil are required to register and give bond. (See sections 314.8 and 314.9.)

Jobbers or dealers who are not manufacturing or producing taxable articles or selling taxable articles direct to manufacturers for use as material in the manufacture or production of, or as component parts of, taxable articles, are not entitled to purchase tax free in accordance with the provisions of sections 314.21 and 314.22, and will not be granted registration certificates.

The Commissioner may cancel the registration certificate and may deny the right to sell or purchase articles tax free in any case where he is satisfied that the registrant is not a bona fide manufacturer of taxable articles, or is not a vendee reselling direct to manufacturers of such articles, or that tax-free sales are being made for purposes not warranted by the law and these regulations.*†

Registration and Bonding

Gasoline and Lubricating Oil

[SEC. 3412. TAX ON GASOLINE.]

(d) Every person subject to tax under this section or section 3413 shall, before incurring any liability for tax under such sections register with the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, with the collector at Baltimore, Maryland) and shall give a bond, to be approved by such collector, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the United States of any tax under such sections; that he shall render truly and completely all returns, statements, and inventories required by law or regulations in pursuance thereof and shall pay all taxes due under such sections; and that he shall comply with all requirements of law and regulations in pursuance thereof with respect to tax under such sections. Such bond shall be in such sum as the collector may require in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, but not less than $2,000. The collector may from time to time require new or additional bond in accordance with this subsection. Every person who fails to register or give bond as required by this subsection, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by this subsection, or who willfully makes any false statement in an application for registration under this subsection, shall upon conviction thereof be fined not more than $5,000 or imprisoned not more than five years, or both, together with the costs of prosecution. If the Commissioner finds that any manufacturer or producer has at any time evaded any Federal tax on gasoline or lubricating oil, he may revoke the registration of such manufacturer or producer, and no sale to, or for resale to, such manufacturer or producer thereafter shall be tax-free under section 3413, this section, or section 3442, but such manufacturer or producer shall not be relieved of the requirement of giving bond under this subsection.

§ 314.8 *Registration.* Every producer (except as hereinafter provided in this section) or importer of gasoline, and every manufacturer or producer of lubricating oil, shall, before incurring any liability for tax with respect to gasoline or lubricating oil, make application for registry to the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, to the collector at Baltimore, Md.).

Form 637–A, Application for registry, shall be used for this purpose and may be obtained from the collector. The application for registry must state specifically the nature of the applicant's business.

Upon receipt of Form 637–A properly executed, and upon acceptance of the bond provided for in section 314.9, the collector will furnish to the applicant Form 637, Certificate of registry, bearing his registration number. This certificate is not transferable from one person to another. In case of a change in the location of the principal place of business within the district in which registered, the collector shall be promptly notified. If the principal place of business is transferred from one collection district to another, a new application for a certificate of registry must be filed with the collector for the district in which the new principal place of business is located.

The number of the certificate of registry must appear on each exemption certificate used by the registrant in purchasing gasoline or lubricating oil tax free for use, further manufacture, or resale.

Those persons holding certificates of registry on Form 637 issued prior to the promulgation of these regulations will not be required to reregister.

In case any importer or producer of gasoline or manufacturer or producer of lubricating oil fails to register and give bond in accordance with the law as provided above, he shall be liable for the penalty imposed by law.

If the Commissioner finds that any importer or producer of gasoline or manufacturer or producer of lubricating oil has at any time evaded any Federal tax on gasoline or lubricating oil, he may revoke the registration certificate issued to such person and no sale to, or sale for resale to, such person thereafter shall be made tax free. The revocation of a certificate of registry will not relieve such person of the requirement of giving a bond in accordance with section 314.9.

For special provisions relative to the registration of dealers, other than dealers selling exclusively to producers of gasoline, permitted to purchase gasoline or lubricating oil tax free for resale direct to manufacturers of taxable articles, see section 314.7.

For special provisions relative to inspection of records of importers or producers of gasoline and manufacturers of lubricating oil by internal-revenue officers, or officers of any State or Territory, or political subdivision thereof, or the District of Columbia, charged with the enforcement or collection of any tax on gasoline or lubricating oil, see section 314.62.

Persons (other than refiners, compounders, blenders, dealers selling exclusively to producers of gasoline, or actual producers of gasoline) who purchase gasoline tax free for resale to producers of gasoline for use by them as material in the manufacture or production of, or as a component part of, taxable articles will not be required to register and give bond as producers of the gasoline purchased tax free unless the Commissioner finds that, by reason of abuse of the privilege of buying tax free, such persons are subject to tax under section 3412 of the Internal Revenue Code. Such purchasers for resale will, however, be required to register in accordance with section 314.7.

Every person who fails to register as required by this section is liable for the penalties imposed by law.*†

§ 314.9 *Bonding.* Every producer or importer of gasoline and every manufacturer or producer of lubricating oil required to register in accordance with section 314.8 must give a bond on Form 928, in duplicate, with his application for certificate of registry. Such bond shall be in a sum equivalent to the approximate amount of tax which would be incurred by him during an average 3-month period at the rates of tax then in effect, but in no case shall the bond be for less than $2,000.

If the amount of the bond so calculated would exceed $30,000, the collector may accept a bond for not less than $30,000. In such cases there should be submitted to the collector for transmittal to the Commissioner all facts pertaining to the ownership and value of the property and equipment which will be of assistance to the Commissioner in determining whether a larger bond should be required from the applicant. In transmitting this data the collector should submit his recommendation as to the sufficiency of the bond.

The amount of the bond must be in multiples of $100. Where the sum equivalent to the approximate amount of tax which would be incurred during the 3-month period is an odd amount, the amount of the bond shall be increased to the next multiple of $100. For example, if the approximate amount of tax likely to be incurred during the 3-month period amounts to $6,666.66, the amount of the bond shall be $6,700.

Every person who fails to give a bond as required by this section is liable for the penalties imposed by law.*†

§ 314.10 *Cancellation clause in bond.* Any bond filed on Treasury Department Form 928 by a manufacturer or producer of lubricating oil or by a producer or importer of gasoline may be accepted with a cancellation clause incorporated therein, or annexed thereto, if such clause provides that:

Any surety on the bond may at any time notify the principal and the Commissioner of Internal Revenue that he desires after a date named, which shall be at least 60 days after the receipt of notification by the Commissioner, to be relieved of liability under said bond. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice (unless supported by other bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before the effective moment of cancellation, in addition to the appropriate penalties and interest, unless the principal pays such tax and appropriate penalties and interest. Said notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

Where the cancellation clause is contained in a document to be affixed to, or associated with, Treasury Department Form 928 referred to above, such cancellation clause must be duly executed by the principal and surety in the same manner as the bond to which it pertains.*†

SUBPART C.—GENERAL EXEMPTIONS

Tax-Free Sales for Further Manufacture

SEC. 3442. TAX-FREE SALES.

Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—

(1) for use by the vendee as material in the manufacture or production of, or as a component part of, an article enumerated in this chapter;

(2) for resale by the vendee for such use by his vendee, if such article is in due course so resold;

* * * * *

For the purposes of this chapter the manufacturer or producer to whom an article is sold under paragraph (1) or resold under paragraph (2) shall be considered the manufacturer or producer of such article.

* * * * *

§ 314.20 *Tax-free sales.* No tax is imposed on any article when sold—

(1) For use by the vendee as material in the manufacturer or production of, or as a component part of, a taxable article;

(2) For resale by the vendee for such use by his vendee if such article is in due course so resold.

The exemption certificates required by sections 314.21 and 314.22 must in every case show the registration number of the vendee. (See section 314.7) *†

§ 314.21 *Articles sold to manufacturers.* To establish the right to exemption with respect to an article sold for use by the purchaser as material in the manufacture or production of, or as a component part of, a taxable article, the manufacturer must obtain from his vendee, prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the vendee is a manufacturer of taxable articles and that the article purchased is to be used by him as material in the manufacture or production of another taxable article or as a component part of such an article.

A manufacturer who purchases an article under an exemption certificate for use in the manufacture or production of a taxable article shall be considered the manufacturer of the article so purchased, and is liable for tax on his use or resale of the article unless the exempt character of the use or resale is established.

For special provisions with respect to tax-free sales of gasoline or lubricating oils to manufacturers or producers of gasoline or lubricating oils, see sections 314.32 and 314.42.

Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(Purchases for further manufacture under section 3442 (1) of the Internal Revenue Code)

_____, 19__.
(Date.)

The undersigned hereby certifies that he is a manufacturer or producer of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, and holds certificate of registry No. ____, issued by the collector of internal revenue at _____, and that the article or articles specified in the accompanying order will be used by him as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A, to be manufactured or produced by him.

It is understood that for all the purposes of such Subchapter A the undersigned will be considered the manufacturer or producer of the articles purchased hereunder, and (except as specifically provided by law) must pay tax on resale or use, otherwise than as specified above, of the articles purchased hereunder. It is further understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to revocation of the privilege of purchasing tax free and to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____
(Name.)

_____
(Address.)

If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable.*†

§ 314.22 *Articles sold for resale to manufacturers.* To establish the right to exemption from tax with respect to an article sold by the manufacturer to any person (either a dealer or another manufacturer) for resale without change in form direct to a manufacturer for use by him as material in the manufacture or production of a taxable article or as a component part thereof, it is necessary that (1) both the manufacturer and the vendee (hereinafter referred to as the "dealer") be registered with the collectors of internal revenue for their respective districts in accordance with the provisions of section 314.7 or 314.8 as the

case may be, (2) the manufacturer obtain from the dealer prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the dealer is engaged in the business of selling direct to manufacturers of taxable articles and that the article is to be resold by him only for use by his vendee as material in the manufacture or production of a taxable article or as a component part thereof, and (3) the manufacturer obtain from the dealer proof that the article has been so resold by the dealer. Such proof shall be either (*a*) a certificate obtained by the dealer from his vendee showing that such vendee purchased the article for use in the manufacture or production of a taxable article and not for resale, or (*b*) a sworn statement by the dealer that he has obtained from his vendee, and has in his possession, such a certificate. The certificate required by (2) suspends liability for the payment of the tax by the manufacturer on the sale of such article for a period of not more than two months from the date when title passes or the date of shipment, whichever is prior. If within two months the manufacturer has not received the proof required by (3), then the temporary suspension of liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 2-month period expires. If such proof later becomes available, a claim for refund of tax paid may be filed, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

The exemption applies only where there is not more than one intervening sale between the manufacturer of the article and the manufacturer purchasing it for further manufacture.

Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(Purchases for resale under section 3442 (2) of the Internal Revenue Code)

_____, 19__.
(Date.)

The undersigned hereby certifies that he is engaged in the business of selling direct to manufacturers or producers of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, and holds certificate of registry No. ____, issued by the collector of internal revenue at _____, and that the article or articles specified in the accompanying order will be resold by him only for use by his vendee as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A.

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to cancellation of the privilege of purchasing tax free and to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____,
(Name.)

_____.
(Address.)

If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable.*†

§ 314.23 *Proof of right to exemption.* Where a manufacturer or a vendee makes a sale under exemption certificate, he must use reasonable diligence to satisfy himself that the use of the certificate is warranted by the law and regulations. If the original vendor has knowledge at the time of his sale that the article sold by him is not intended for use or resale by such vendee as specified in the certificate given by the vendee, the original vendor is liable for the tax and is not relieved of liability by the exemption certificate. Where any person attempts to defeat the tax imposed on the sale of articles covered by these regulations by fraudulently giving an exemption certificate, he is liable for the penalties imposed by law. (See section 314.65)

Proper records, with the supporting orders, invoices, certificates, and sworn statements required by these regulations, must be maintained with respect to exempt sales as provided in section 314.62. If such evidence can not be produced on demand of any internal-revenue officer, tax will be assessed. If any such documents are false or fraudulent, the guilty parties are liable to the penalties provided by law. (See section 314.65) *†

Sales to States, etc.

[SEC. 3442. TAX-FREE SALES.]

[Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax under this chapter shall be imposed with respect to the sale of any article—]

(3) for the exclusive use of the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia.

§ 314.24. *Sales to States or political subdivisions thereof and to the United States.* No tax attaches to articles sold by the manufacturer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, provided the exempt character of the sale is established as required by these regulations.

No sale may be made tax free by the manufacturer to a dealer for resale to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, even though it is known at the time of the sale that the article will be so resold. However, where any dealer resells a tax-paid article to any of the governmental units named above, for its exclusive use, the manufacturer who paid the tax to the United States on his sale of the article may secure a refund or credit in accordance with the provisions of section 314.64.

To establish the right to exemption from tax where the sale of an article is made by the manufacturer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, it is necessary that (1) the manufacturer have definite knowledge prior to or at the time of sale, that the article is purchased for such use, and (2) he obtain from an authorized officer of the United States, State, Territory of the United States, political subdivision, or District of Columbia, as the case may be, and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

Where the certificate is obtained subsequent to the sale but prior to the time the manufacturer is required to file a return covering taxes due for the month during which the sale was made he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

The certificate required by this section must include an agreement that if the articles covered thereby are used otherwise than for the *exclusive use* of the United States, the State, Territory, political subdivision, or the District of Columbia, as the case may be, or if any of such articles are resold to employees or others, a responsible officer of the United States, State, Territory, or political subdivision, or the District of Columbia, as the case may be, will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

The certificate required by this section shall be in substantially the following form:

EXEMPTION CERTIFICATE

(For use by United States, States, Territories, or political subdivisions thereof, or the District of Columbia.)

_____, 19__.
(Date.)

The undersigned hereby certifies that he is _____ of _____
(Title of officer.) (United States, State, Territory, or political subdivision, or District of Columbia.) and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from _____ for the exclusive use of _____ of
(Name of company.) (Governmental unit.)
(United States, State, Territory, or political subdivision, or District of Columbia.)

It is understood that the exemption from tax in the case of sales of articles under this exemption certificate to the United States, States, etc., is limited to the sale of articles purchased for their *exclusive use*, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported by me to the manufacturer of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

---------- (Signature.)

(Title of officer.)

If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in section 314.62. If, upon inspection, it is discovered that a manufacturer's records with respect to any sale claimed to be tax-free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax shall be payable by the manufacturer on such sale.

The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.*†

Exports, and Shipments to Possessions of the United States

SEC. 3449. APPLICABILITY OF ADMINISTRATIVE PROVISIONS.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

SEC. 2705. EXPORTATION.

Under such rules and regulations as the Commissioner with the approval of the Secretary may prescribe, the tax imposed under section 2700 (a) shall not apply in respect of articles sold or leased for export or for shipment to a possession of the United States and in due course so exported or shipped. Under such rules and regulations the amount of any internal revenue tax erroneously or illegally collected in respect of such articles so exported or shipped may be refunded to the exporter or shipper of the articles, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

§ 314.25 *Sales for export.* To exempt from tax a sale for export it is necessary that two conditions be met, namely, (1) that the article be identified as having been sold *by the manufacturer* for export and (2) that it be exported in due course.

An article will be regarded as having been sold *by the manufacturer* for export if the manufacturer has in his possession at the time title passes or at the time of shipment (whichever is prior), (*a*) a written order or contract of sale showing that the manufacturer is to ship the article to a foreign destination; or (*b*) where delivery by the manufacturer is to be made within the United States, a sworn statement from the purchaser showing (1) that the article is purchased to fill existing or future orders for delivery to a foreign destination; or that the article is purchased for resale to another person engaged in the business of exporting who will export the article, and (2) that such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export.

The written order or contract of sale or the sworn statement referred to in (*a*) and (*b*) of the preceding paragraph suspends liability for the payment of the tax by the manufacturer on such sales for export for a period of six months from the date when title passes or the date of shipment, whichever is prior. If within such period the manufacturer has not received and attached to the order or contract, or sworn statement, proper "proof of exportation" (see section 314.26), then the temporary suspension of the liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 6-month period expires.

The exemption provided herein is limited to sales by the manufacturer for export and is not applicable in cases where sales of taxable articles are made from a dealer's stock for export even though actually exported.*†

§ 314.26 *Proof of exportation.* Exportation may be evidenced by (1) a copy of the export bill of lading issued by the delivering carrier, or (2) a certificate by the agent or representative of the export carrier showing actual exportation of the article, or (3) a certificate of landing signed by a customs officer of the foreign country to which the article is exported, or (4) where such foreign country has no customs administration, a sworn statement of the foreign consignee showing receipt of the article.

In any case where the manufacturer is not the exporter, such manufacturer must have in his possession an affidavit from the person to whom he sold the article stating that the article was in fact exported in due course by him or was sold to another person who in due course exported the article. This affidavit must state what evidence is available to show that the article was in fact exported in due course prior to use or further manufacture and prior to resale in the United States other than for export. Such evidence must be that described in (1), (2), (3), or (4) in this section, and the affidavit must show where such evidence is readily available for inspection by Government officers.

In all cases the sales records together with the evidence of exportation must be preserved by the manufacturer for a period of at least four years from the last day of the month following the sale, and must be readily accessible for inspection by internal-revenue officers.

In any case where the manufacturer does not have in his possession within the 6-month period, proof of exportation as outlined herein, the manufacturer must pay the tax involved. If proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, or a credit may be taken upon any subsequent monthly return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.*†

§ 314.27 *Shipments to possessions of the United States.* The same provisions as relate to sales for export and proof of exportation will apply to sales for shipment to a possession of the United States if the articles are in due course so shipped. (See sections 314.1, 314.25, and 314.26)

This exemption does not apply with respect to sales of articles for shipment to the Territories of Alaska and Hawaii for the reason that these Territories are by a statutory definition included in the term "United States." (See section 3797 (a) (9))*†

Exemption From Tax of Certain Supplies for Certain Vessels

SEC. 3451. EXEMPTION FROM TAX OF CERTAIN SUPPLIES FOR VESSELS.

Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this chapter shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this chapter, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 3430. The term "vessels" as used in this section includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.

§ 314.28 *Exemption of certain supplies for certain vessels.* No tax attaches to the sale by the manufacturer of an article covered by these regulations where such article is sold by the manufacturer direct for use as fuel supplies, ships' stores, sea stores, or legitimate equip-

ment on (1) vessels of war of the United States or of any foreign nation, (2) vessels employed in the fisheries or in the whaling business, (3) vessels actually engaged in foreign trade, (4) vessels actually engaged in trade between the Atlantic and Pacific ports of the United States, or (5) vessels actually engaged in trade between the United States and any of its possessions.

The terms "fuel supplies," "ships' stores," "legitimate equipment" include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels.

The term "sea stores" includes any article purchased for use or consumption by the passengers or crew, or both, of a vessel upon its voyage.

The term "vessel" includes (*a*) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, (*b*) civil aircraft registered in the United States and employed in foreign trade or in trade between the United States and any of its possessions, and (*c*) civil aircraft registered in a foreign country and employed in foreign trade or in trade between the United States and any of its possessions.

The term "vessels of war of the United States or of any foreign nation" includes (*a*) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water and constituting a part of the armed forces of the United States or of a foreign nation and (*b*) aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

The term "trade" includes the transportation of persons or property for hire and the making of the necessary preparations for such transportation.

No sale may be made tax free to a dealer for resale for use as fuel supplies, ships' stores, sea stores, or legitimate equipment for the vessel enumerated, even though it is known at the time of sale that the article will be so resold. However, where any dealer resells a tax-paid article for such use the manufacturer who paid the tax to the United States on his sale of the article may secure a refund or credit in accordance with the provisions of section 314.64.

Tax-free sales under this section must be restricted to such of the articles covered by these regulations as normally form a part of the supplies, stores, or equipment of the vessels enumerated. The exemption does not apply to articles which are for resale to passengers or members of the crew for consumption or use otherwise than during the voyage of a vessel, or to articles which are to be transported for the use of others, or to those which are to be used in any manner other than as specified in this section. Articles may not be sold by the manufacturer tax free direct to passengers or crew but only to the owner, officer, charterer, or authorized agent of the vessel.

The exemption from tax provided for under this section is not applicable to vessels engaged in trade between domestic ports on the Pacific Ocean, or between domestic ports on the Atlantic Ocean and Gulf of Mexico, or engaged in trade on the inland waterways of the United States. If a vessel is actually engaged in a voyage from a port in the United States to a foreign port or to a port in one of the possessions of the United States, or between Atlantic and Pacific ports of the United States, the exemption from the tax is not destroyed because the vessel stops at an intermediate port of call in the United States as a part of that voyage to the ultimate destination.

The exemption with respect to civil aircraft is more limited than the exemption with respect to other vessels in that it extends only to civil aircraft employed in foreign trade, or in trade between the United States and any of its possessions. Although section 3451 exempts sales of articles for use as fuel supplies, etc., on watercraft engaged in trade between the Atlantic and the Pacific ports of the United States, it does not exempt sales of articles for use as fuel supplies, etc., on civil aircraft engaged in trade between such ports. In the case of civil aircraft registered in a foreign country, the exemption is further limited in that the privilege of exemption may be granted only so long as such foreign country allows a substantially reciprocal exemption with respect to civil aircraft registered in the United States. If a foreign country discontinues the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce of the discontinuance of the exemption allowed by the foreign country.

The exemption provided in the case of articles sold for the prescribed use on vessels employed in the fisheries or in the whaling business is limited to articles sold by the manufacturer for such use on vessels while employed, and to the extent employed, exclusively in the fisheries or in the whaling business.

To establish the right to exemption from the tax on the sale of an article by the manufacturer direct for use as fuel supplies, etc., on the vessels enumerated above, it is necessary that (1) the manufacturer have definite knowledge prior to or at the time of sale that the article was purchased for such use, and (2) he obtain from the owner, officer, charterer, or authorized agent of the vessel and retain in his possession a properly executed exemption certificate in the form prescribed by this section. If articles are sold tax free for use on civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificate must show the name of the country in which the aircraft is registered.

Where the certificate is obtained subsequent to the sale but prior to the time the manufacturer is required to file a return covering taxes due for the month during which the sale was made, he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

The certificate required by this section must include an agreement that if the articles covered thereby are disposed of, or used, otherwise than as fuel supplies, ships' stores, sea stores, or legitimate equipment on the vessels enumerated, the person who signed the certificate will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

The following form of exemption certificate will be acceptable for the purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (section 3451 of the Internal Revenue Code).)

----------, 19__.
(Date.)

The undersigned purchaser hereby certifies that he is----------
(Owner, officer, charterer, or an authorized agent.) of ---------- (Name of company and that the article or articles and vessel.) specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the following classes enumerated in section 3451 of the Internal Revenue Code:

(Check class to which vessel belongs.)

———(1) Vessels engaged in foreign trade.
———(2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States.
———(3) Vessels engaged in trade between the United States and any of its possessions.
———(4) Vessels employed in the fisheries or whaling business.
———(5) Vessels of war of the United States or a foreign nation.

If the articles are purchased for use on civil aircraft engaged in trade as specified in (1) or (3) above, state the name of the

country in which the aircraft is registered.

The undersigned understands that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies, etc., on pleasure vessels, or on any type of aircraft except (a) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemption, and (b) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and upon conviction to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by satisfactory evidence the purpose for which the article was used.

(Name.)

(Address.)

If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in section 314.62. If, upon inspection, it is discovered that a manufacturer's records with respect to any sale claimed to be tax free do not include a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax shall be payable by the manufacturer on such sale.

The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.*†

Exemption From Tax of Certain Supplies for Aircraft

SECTION 317 (b) OF THE TARIFF ACT OF 1930, AS ADDED BY THE ACT APPROVED JUNE 25, 1938 (52 STAT. 1081)

(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax.

SECTION 309 (d) OF THE TARIFF ACT OF 1930, AS AMENDED BY SECTION 5 OF THE ACT APPROVED JUNE 25, 1938 (52 STAT. 1050)

(d) RECIPROCAL PRIVILEGES. The privileges granted by this section and section 317 of this Act in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 317 shall not apply thereafter in respect of aircraft registered in that foreign country.

§ 314.29 *Exemption of certain supplies for aircraft.* Articles sold for use on foreign aircraft are, subject to certain limitations, considered to be exported and therefore subject to the same exemption as though exported. This exemption is limited to articles sold for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions. The exemption is further limited by the requirement that the foreign country of registry must allow a substantially reciprocal exemption in respect to aircraft registered in the United States.

To exempt from tax a sale for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country (which allows substantially reciprocal exemption) and actually engaged in foreign trade or trade between the United States and any of its possessions, it is necessary (1) that the article be identified as having been sold by the manufacturer for such use and (2) that it be so used in due course. An article will be regarded as having been sold for use as supplies upon, or in the maintenance or repair of, such aircraft if the manufacturer has in his possession at the time title passes or at the time of shipment (whichever is prior) a sworn statement from the purchaser showing that the article is purchased for such use.

With respect to an article sold by a manufacturer for resale for use on foreign aircraft, where it is desired to claim exemption, there should be obtained from the owner, officer, charterer, or authorized agent of the aircraft a written statement showing that the article is actually purchased for use as supplies upon, or in the maintenance or repair of such aircraft. Such statement must show the name of the country in which the aircraft is registered.*†

SUBPART D.—GASOLINE

SEC. 3412. TAX ON GASOLINE.

(a) There shall be imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 1 cent a gallon, except that under regulations prescribed by the Commissioner with the approval of the Secretary the tax shall not apply in the case of sales to a producer of gasoline.

(b) If a producer or importer uses (otherwise than in the production of gasoline) gasoline sold to him free of tax, or produced or imported by him, such use shall for the purposes of this chapter be considered a sale. Any person to whom gasoline is sold tax-free under this section shall be considered the producer of such gasoline.

(c) As used in this section—

(1) the term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as a producer.

(2) the term gasoline means (A) all products commonly or commercially known or sold as gasoline (including casinghead and natural gasoline), benzol, benzene, or naphtha, regardless of their classifications or uses; and (B) any other liquid of a kind prepared, advertised, offered for sale or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes; except that it does not include any of the foregoing (other than products commonly or commercially known or sold as gasoline) sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, and does not include kerosene, gas oil, or fuel oil.

§ 314.30 *Use of terms.* The term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as an actual producer. The term "producer" also includes any person (not included in the preceding sentence) to whom gasoline is sold tax free for any purpose but such person is considered a "producer" only with respect to gasoline purchased tax free.

The term "gasoline" includes:

(A) All products commonly or commercially known or sold as gasoline, including casinghead and natural gasoline, and including any petroleum product satisfying the volatility requirements (exclusive of vapor pressure) of United States motor gasoline (United States Government Specifications No. VV-G-101) regardless of their classifications or uses; provided, however, that liquefied gases, such as propane, butane, or pentane, or mixtures of the same, and any product (1) more than 90 per cent of which is evaporated at 310° F. and having an A. S. T. M. octane number less than 70, or (2) having a Reid vapor pressure at 100° F. of more than 30 pounds, shall fall within paragraph B below.

(B) Benzol, benzine, naphtha, or any other liquid of a kind prepared, advertised, offered for sale, or sold for use as, or used as, a fuel for the propulsion of motor vehicles, motor boats, or airplanes, which means benzol and benzene and any refined, partly refined, or unrefined product, 10 per cent of which has been recovered when the thermometer reads 347° F. (175° C.) *or* 95 per cent of which has been recovered when the thermometer reads 464° F. (240° C.) when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naphtha, Kerosine and Similar Petroleum Products" (A. S. T. M. designation: D86) of the American Society for Testing Materials, regardless of the trade name under which sold. However, such products are not taxable as "gasoline" when they are sold under an exemption certificate, obtained prior to or at the time of sale by the importer or producer, certifying that such products are purchased for use (1) otherwise than as a fuel for the propulsion of motor vehicles, motor boats or airplanes, *and* (2) otherwise than in the manufacture or production of such a fuel. This exception is limited to the articles named in paragraph (B) which are not com-

monly or commercially known or sold as "gasoline," as defined in paragraph (A).

The term "gasoline" does not include products commonly or commercially known or sold as kerosene, gas oil or fuel oil, which means any product so designated (1) 10 per cent of which has not been recovered when the thermometer reads 347° F. (175° C.) *and* (2) 95 per cent of which has not been recovered when the thermometer reads 464° F. (240° C.), when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naphtha, Kerosine, and Similar Petroleum Products" (A. S. T. M. designation: D86) of the American Society for Testing Materials. Products sold as kerosene, gas oil or fuel oil which do not fall within the specifications of both (1) *and* (2) above, are taxable unless sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, under a certificate as outlined in section 314.33.*†

§ 314.31 *Scope of tax.* The tax attaches to the sale or use of gasoline by the producer or importer thereof, or by any producer of gasoline, regardless of when or whether such gasoline was produced by him.

All producers and importers of gasoline must register and give bond to the collector, in accordance with the provisions of sections 314.8 and 314.9.*†

Sales of Gasoline Not Subject to Tax

§ 314.32 *Sales to producers of gasoline.* Gasoline may be sold tax free by a producer of gasoline to other producers of gasoline.

In the case of such sales both the producer and the purchaser must be registered and bonded as required by sections 314.8 and 314.9.

To establish the right to exemption under this section the vendor must obtain from the purchaser, prior to or at the time of sale, a certificate showing that the purchaser is a producer of gasoline. The certificate must bear the registration number of the purchaser and must also show that the purchaser is bonded as required by sections 314.8 and 314.9. If upon inspection it is found that the records of a producer do not contain proper certificates, with supporting invoices, establishing that the sales were exempt, such vendor-producer will be required to pay the tax.

Tax-free sales of gasoline to producers of gasoline must be made under an exemption certificate in substantially the following form:

EXEMPTION CERTIFICATE

(For use by producers of gasoline under section 3412 of the Internal Revenue Code.)

----------, 19--.
(Date.)

The undersigned hereby certifies that (1) he is a producer of gasoline, (2) he has filed a bond, which has been accepted by the collector of internal revenue at ----------, and (3) he holds certificate of registry No. ----, issued by such collector of internal revenue.

It is understood that the undersigned is liable for tax as a producer of gasoline with respect to all gasoline sold or used by him, unless specifically exempted by law. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to the cancellation of their certificate of registry and to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

----------,
(Name.)

(Address.)

For special provisions with respect to (1) tax-free sales of gasoline to registered dealers for resale direct to producers of gasoline; (2) tax-free sales of gasoline direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use; (3) tax-free sales for export or for shipment to possessions of the United States; (4) tax-free sales direct for use as ships' stores, etc.; and (5) tax-free sales for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, see sections 314.22, 314.24, 314.25, 314.27, 314.28, and 314.29.

When gasoline is sold tax free to other producers of gasoline or to a registered dealer in accordance with the provisions of section 314.22, for resale by such dealer for use by his vendee in the further manufacture of a taxable article, the producer making such tax-free sales must use due diligence to satisfy himself that the gasoline in question is sold to, or for resale to, a producer of gasoline or a manufacturer of other taxable articles who has complied with the applicable provisions of these regulations with respect to registration and bonding.

If a producer has reason to question the validity of the registration claimed on any exemption certificate, application for information should be made to the office of the collector who is alleged to have issued the registration certificate.*†

§ 314.33 *Sales of benzol, benzene, naphtha, or other taxable liquids to nonmotor fuel users.* No tax attaches to benzol, benzene, naphtha, or any other liquid specified in paragraph (B) of section 314.30 (which does not fall within the range of the properties of products commonly or commercially known or sold as gasoline, as described in paragraph (A) of section 314.30) sold by the manufacturer direct for use (*a*) otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes, and (*b*) otherwise than in the manufacture or production of such fuel.

No sale of benzol, benzene, naphtha, or other liquid within the scope of paragraph (B) of section 314.30 may be made tax free by the producer to a dealer for resale for nonmotor fuel uses, even though it is known at the time of the sale that the product will be so resold. However, where any dealer resells a tax-paid product for nonmotor fuel uses, the producer who paid the tax to the United States on his sale of the product may secure a refund or credit in accordance with the provisions of section 314.64.

To establish the right to exemption from tax where the sale of the product is made by the manufacturer direct to a purchaser for use (*a*) otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes *and* (*b*) otherwise than in the manufacture or production of such fuel it is necessary that (1) the manufacturer have definite knowledge prior to or at the time of sale that the product in question is purchased for such use and (2) he obtain from the purchaser and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

Where the certificate is obtained subsequent to the sale but prior to the time the manufacturer is required to file a return covering taxes due for the month during which the sale was made, he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313. The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by purchasers of benzol, benzene, naphtha, or other taxable liquid, for purposes other than as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and otherwise than in the manufacture or production of such fuel under section 3412 of the Internal Revenue Code.)

----------, 19---.
(Date.)

The undersigned purchaser hereby certifies that he is a ----------
(State business and article or articles manufactured.) and that the ---------- (State whether benzol, benzene, naphtha, or other taxable liquid.) in the order covered by this certificate will not be used as a fuel for the propulsion of motor vehicles, motorboats, or airplanes, and will not be used in the manufacture or production of such fuel, but will be used for the following purpose: ----------

The undersigned understands that if the benzol, benzene, naphtha, or other taxable liquid is used, sold, or otherwise disposed of

except as above stated, he will be liable for the tax upon such use, sale, or other disposition of such product. It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

----------,
(Name.)

(Address.)

If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in section 314.62. Where, upon inspection, it is discovered that the records of an importer or producer with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, the tax shall be payable by the importer or producer on such sale.*†

§ 314.34 *Use by producer or importer.* If gasoline purchased tax free by an importer or producer is used by him (otherwise than in the production of gasoline), such use will be considered a sale and is taxable. Likewise, if any importer or producer uses (otherwise than in the production of gasoline) gasoline imported or produced by him, such use will be considered a sale and is taxable.

If a person purchases gasoline tax free and uses it for any purpose for which exemption is not provided by law, such use is taxable.

The phrase "otherwise than in the production of gasoline" includes any use of it by a producer of gasoline, other than as component material in the manufacture or production of gasoline.*†

§ 314.35 *Rate of tax.* The tax is payable by the importer or producer thereof, or by any producer of gasoline, at the rate of 1 cent a gallon.*†

SUBPART E.—LUBRICATING OILS

SEC. 3413. TAX ON LUBRICATING OILS.

There shall be imposed upon lubricating oils sold in the United States by the manufacturer or producer a tax at the rate of 4 cents a gallon, to be paid by the manufacturer or producer. Every person liable for tax under this section shall register and file bond as provided in section 3412 (d). Under regulations prescribed by the Commissioner with the approval of the Secretary, no tax shall be imposed under this section upon lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him, but for the purposes of this chapter such vendee shall be considered the manufacturer or producer of such lubricating oils.

§ 314.40 *Use of terms.* The term "lubicating oil" as used in these regulations includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant.

The term "lubricating oils" does not include products of the type commonly known as grease. Oleaginous substances which are classed as grease and which contain oil are not subject to the tax when of a worked consistency of less than 390 penetration units, or an unworked consistency of less than 360 penetration units, by the method of test of the American Society for Testing Materials D–217–33–T.

The term "manufacturer" includes (1) any person who produces lubricating oil by any process of manufacturing, refining, or compounding, or any manipulation involving substantially more than mere mixing of taxable oils, (2) any person who produces lubricating oil by mixing taxable oils with other substances to produce lubricating oils, and (3) any person who cleans, renovates, or refines used or waste lubricating oil by any method or process which produces an oil substantially equivalent to new lubricating oil.

The term "manufacturer" does not include a person who merely blends or mixes two or more taxable lubricating oils.*†

SEC. 314.41 *Scope of tax.* The tax attaches to the sale by the manufacturer of lubricating oil. However, no tax attaches to the sale of lubricating oil by the importer thereof. Lubricating oils imported into the United States are subject to a tax of 4 cents a gallon under section 3422, upon the importation thereof. This tax is administered by the Bureau of Customs of the Treasury Department.

All manufacturers of lubricating oils must register and give bond in accordance with the provisions of sections 314.8 and 314.9.*†

Sales of Oil Not Subject to Tax

SEC. 314.42 *Sales to manufacturers of lubricating oil for resale.* No tax attaches to the sale of lubricating oil by the manufacturer direct to a manufacturer of lubricating oil for resale by him, but for the purposes of the tax such vendee manufacturer shall be considered the manufacturer of such lubricating oil.

No lubricating oil shall be sold tax free to another manufacturer of lubricating oil for resale unless both the manufacturer and the purchaser are registered and bonded as manufacturers of lubricating oil in accordance with the provisions of sections 314.8 and 314.9.

All tax-free sales of lubricating oil to manufacturers of lubricating oils must be made under an exemption certificate in substantially the following form:

EXEMPTION CERTIFICATE

(For use by manufacturers of lubricating oil under section 3413 of the Internal Revenue Code of section 3442 of the Internal Revenue Code.)

----------, 19--.
(Date.)

The undersigned hereby certifies that (1) he is a manufacturer or producer of lubricating oils, (2) he has filed a bond, which has been accepted by the collector of internal revenue at ----------, (3) he holds certificate of registry No. -- issued by such collector of internal revenue, and (4) the lubricating oils purchased hereunder are for resale by him or use by him as material in the manufacture or production of lubricating oils or as a component part of lubricating oils to be manufactured or produced by him.

It is understood that the undersigned is liable for tax as the manufacturer or producer upon his resale, or upon his use otherwise than as specified above, of the oils purchased hereunder, unless specifically exempted by law. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to the cancellation of their certificate of registry and to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

----------,
(Name.)

(Address.)

For special provisions with respect to (1) tax-free sales of lubricating oil to manufacturers for use in further manufacture of taxable articles and to registered dealers for resale direct to such manufacturers; (2) tax-free sales of lubricating oil direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use; (3) tax-free sales for export or for shipment to possessions of the United States; (4) tax-free sales direct for use as ships' stores, etc.; (5) tax-free sales for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions; and (6) tax-free sales of lubricating oil direct for nonlubricating uses by the purchaser, see sections 314.22, 314.24, 314.25, 314.27, 314.28, 314.29, and 314.43.*†

§ 314.43 *Sales of oil for nonlubricating uses.* No tax attaches where oil is sold by the manufacturer direct for nonlubricating uses by the purchaser. No sale of oil may be made tax free by the manufacturer to a dealer for resale for nonlubricating uses even though it is known at the time of sale that the oil will be so resold. However, where any dealer resells a tax-paid oil for nonlubricating uses, the manufacturer who paid the tax to the United States on his sale of the oil, may secure a refund or credit in accordance with the provisions of section 314.64.

To establish the right to exemption from tax with respect to lubricating oil sold by the manufacturer *direct* for nonlubricating purposes, it is necessary that (1) the manufacturer have definite knowledge, prior to or at the time of sale, that the product in question is purchased for such purposes, and (2) he obtain from the purchaser and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

Where the certificate is obtained subsequent to the sale but prior to the time

the manufacturer is required to file a return covering taxes due for the month during which the sale was made, he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

The certificate required by this section must include an agreement that if the oil is disposed of, or used otherwise than for the nonlubricating purpose for which purchased, the person who signed the exemption certificate will report such fact to the manufacturer. The tax applicable to the sale of such product shall be included by the manufacturer in his return for the month during which such report is received by him.

The following is a form of exemption certificate which will be acceptable for purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by purchasers of oil for nonlubricating purposes.)

----------, 19__.
(Date.)

The undersigned purchaser hereby certifies that he is a ----------
(State business and
----
article or articles manufactured.)
and that the oil covered by the accompanying order or as specified on the reverse side hereof, will not be used or resold for lubrication but will be used by him for the following purposes:

The undersigned understands that if the oil is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer, otherwise the privilege of purchasing tax free may be canceled; that he will, if a bonded and registered manufacturer of lubricating oil, be liable for the tax upon his sale of such oil, and that whether or not a bonded and registered manufacturer, he will, for fraudulent use of the certificate to secure exemption, be subject to a penalty equivalent to the amount of tax due on the sale of the oil and to a fine of not more than $10,000, or imprisonment for not more than five years, or both, together with the costs of prosecution. The undersigned also understands that he must be prepared to establish by competent evidence the purpose for which such oil was used.

----------,
(Name.)

(Address.)

If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales shall be retained as provided in section 314.62. If, upon inspection, it is discovered that a manufacturer's records with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, the tax shall be payable by the manufacturer on such sale.

The articles covered by the exemption certificate must be fully identified as to the nature, quantity, and date of sale.*†

§ 314.44 *Rate of tax.* The tax is payable by the manufacturer at the rate of 4 cents per gallon. A manufacturer of nonfluid lubricating oils which are sold by weight may use 8 pounds to the gallon as a basis for computing and reporting the tax upon the sale or use of such oils.*†

SUBPART F.—MATCHES

SEC. 3409. TAX ON MATCHES.

There shall be imposed on fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, sold by the manufacturer, producer, or importer, a tax of 5 cents per one thousand matches.

§ 314.50 *Scope of tax.* The tax is imposed upon the sale by the manufacturer of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk.*†

§ 314.51 *Fancy wooden matches.* A fancy wooden match, within the meaning of the law, is one which has a wooden stem and which, in addition to serving the purpose of the ordinary match, is colored, or decorated, or manufactured in such a manner as to be more ornamental or more attractive than the ordinary match.*†

§ 314.52 *Rate of tax.* The tax is payable by the manufacturer at the rate of 5 cents per thousand fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk.*†

SUBPART G.—MISCELLANEOUS PROVISIONS

Administrative Provisions

Monthly Returns and Payment of Tax

SEC. 3448. RETURNS AND PAYMENT OF MANUFACTURERS' TAXES.

(a) Every person liable for any tax imposed by this chapter other than taxes on importation shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid.

Applicability of Administrative Provisions

SEC. 3449. APPLICABILITY OF ADMINISTRATIVE PROVISIONS.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, in so far as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

SEC. 2711. OTHER LAWS APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter.

Records, Statements, and Special Returns

SEC. 2709. RECORDS, STATEMENTS, AND RETURNS.

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SEC. 3603. NOTICE REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SEC. 3330. WITNESSING OF RETURNS IN LIEU OF OATH.

The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of $10, be signed or acknowledged before two witnesses instead of under oath.

SEC. 3632. AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY.

(a) INTERNAL REVENUE PERSONNEL.

(1) PERSONS IN CHARGE OF ADMINISTRATION OF INTERNAL REVENUE LAWS GENERALLY. Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

(2) PERSONS IN CHARGE OF EXPORTS AND DRAWBACKS. Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

(b) OTHERS. Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

Examination of Books and Witnesses

SEC. 3614. EXAMINATION OF BOOKS AND WITNESSES.

(a) TO DETERMINE LIABILITY OF THE TAXPAYER. The Commissioner, for the purpose

of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

* * * * *

SEC. 3612. RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

(a) AUTHORITY OF COLLECTOR. If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) AUTHORITY OF COMMISSIONER. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

(1) TO MAKE RETURN. Make a return, or

(2) TO AMEND COLLECTOR'S RETURN. Amend any return made by a collector or deputy collector.

(c) LEGAL STATUS OF RETURNS. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

* * * * *

§ 314.60 *Returns.* Each person required to report a tax on the sale or use of any of the articles covered by these regulations, must make a return on Form 726 in accordance with the instructions thereon. The return must be made in duplicate under oath for each calendar month and must be verified before an officer duly authorized to administer oaths. If the amount of the tax is $10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. Such return, together with the tax, must be filed with the collector of the district in which is located the principal place of business of the taxpayer (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.), on or before the last day of the month following that for which it is made.

When the last day of the month in which the return is due falls on Sunday or a legal holiday the return may be filed with the collector of internal revenue, or his authorized representative, on the next secular or business day. A return must be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a manufacturer ceases business the last return should be marked "Final return."

Returns covering taxes collected from vendees and paid under section 3447 (b) of the Internal Revenue Code should be made as prescribed above on Form 726. If a vendee, liable for tax, refuses to pay to the vendor the tax due, the vendor should report to the collector the name and address of such person, the nature of the transaction, the amount involved in the contract, and the date of the payment of such amount. Upon receipt of such information the collector will report the item to the Bureau for direct assessment against such person.*†

§ 314.61 *Payment of taxes.* All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. If the tax is not paid when due there shall be added as part of the tax interest at the rate of 6 per cent per annum from the time the tax became due to the actual date of payment or assessment, whichever is prior. For provisions with respect to interest generally, including interest on assessments, see section 314.65.*†

Examination of Records of Sales of Gasoline and Lubricating Oil

[SEC. 3412. TAX ON GASOLINE.]

(e) Under regulations prescribed by the Commissioner with the approval of the Secretary, records required to be kept with respect to taxes under section 3413, or this section, and returns, reports, and statements with respect to such taxes filed with the Commissioner or a collector, shall be open to inspection by such officers of any State or Territory or political subdivision thereof or the District of Columbia as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils. The Commissioner and each collector shall furnish to any of such officers, upon written request, certified copies of any such statements, reports, or returns filed in his office upon the payment of a fee of $1 for each one hundred words or fraction thereof in the copy or copies requested.

§ 314.62 *Records.* Every person required to file a return and pay tax on the sale or use of any article covered by these regulations must keep accurate and complete records and accounts with respect to such sale or use. Records must be maintained in such a manner as to show:

(*a*) Quantity on hand at beginning of month;

(*b*) Quantity produced during the month;

(*c*) Quantity purchased tax free;

(*d*) Quantity purchased tax paid;

(*e*) Quantity sold tax free;

(*f*) Quantity sold subject to tax;

(*g*) Quantity used in production of other taxable commodities;

(*h*) Quantity used otherwise;

(*i*) Actual wastage, evaporation, and other losses, etc.; and

(*j*) Quantity on hand at end of month.

Every person liable for tax on the sale of gasoline or lubricating oil must maintain records as outlined above for a period of at least four years from the date the tax became due, or, in the case of tax-free sales, for a period of at least four years from the last day of the month following the sale, and all such records must be available for ready inspection by internal-revenue officers. The law also provides that such records shall be open to inspection by officers of any State or Territory, or political subdivision thereof, or the District of Columbia, who are charged with the enforcement or collection of any tax on gasoline or lubricating oils.

The records maintained in the Bureau and in the various collection districts with respect to the taxes imposed on the sale or use of gasoline or lubricating oil, including all returns, reports, and statements with respect to such taxes, shall be at all times open to inspection by internal-revenue officers, or by officers of any State or Territory, or political subdivision thereof, or of the District of Columbia, who are charged with the enforcement or collection of any tax on gasoline or lubricating oils. Upon written request from officers of a State or Territory, or political subdivision thereof, or the District of Columbia, for certified copies of any such statements, reports, or returns filed in the Bureau or the office of a collector, the Commissioner or collector shall furnish to any such officer upon payment of a fee of $1 for each 100 words or fraction thereof, the copy or copies requested.

Every person liable for tax on the sale of matches must retain records as outlined above for a period of at least four years from the date the tax became due, or, in the case of tax-free sales, for a period of at least four years from the last day of the month following the sale, and all such records must be available for inspection at all times by internal-revenue officers. The books of every person liable to tax shall at all times be open for inspection by Government officers. Every person who fails to keep proper and accurate records as required by this section is liable for the penalties imposed by law. (See section 314.65.)*†

Jeopardy Assessments

SEC. 3660. JEOPARDY ASSESSMENT.

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

§ 314.63 JEOPARDY ASSESSMENT. Whenever in the opinion of the collector it becomes necessary to protect the interests of the Government by requiring an immediate return and collection of the tax, the

matter shall be promptly reported to the Commissioner by telegram or letter showing the reasons therefor. The communication must state the full name and address of the person involved, the kind and amount of taxes due and the period involved, so that the Commissioner can immediately assess the tax together with all penalties and interest due. Such tax, penalties, and interest will, upon assessment, become immediately due and payable, and the collector shall, without delay, issue a notice and demand for payment thereof in full.

If a taxpayer is not actually in default in filing returns or in paying any tax under the internal-revenue laws, the collection of the whole or any part of the amount of such jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due.

Upon refusal to pay, or failure to pay or give bond, the collector shall proceed immediately to collect the tax, penalty, and interest by distraint, without regard to the 10-day period after notice and demand prescribed in section 3690.*†

Credits and Refunds

SEC. 3770. AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

(a) TO TAXPAYERS.—

(1) ASSESSMENTS AND COLLECTIONS GENERALLY. Except as otherwise provided by law in the case of income, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) ASSESSMENTS AND COLLECTIONS AFTER LIMITATION PERIOD. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

(3) DATE OF ALLOWANCE. Where the Commissioner has signed a schedule of overassessments in respect of any internal revenue tax imposed by this title, the Revenue Act of 1932, or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

SEC. 3313. PERIOD OF LIMITATION UPON REFUNDS AND CREDITS.

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

SEC. 3443. CREDITS AND REFUNDS.

(a) A credit against tax under this chapter, or a refund, may be allowed or made—

(1) to a manufacturer or producer, in the amount of any tax under this chapter which has been paid with respect to the sale of any article (other than a tire or inner tube) purchased by him and used by him as material in the manufacture or production of, or as a component part of, an article with respect to which tax under this chapter has been paid, or which has been sold free of tax by virtue of section 3442, relating to tax-free sales.

(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

(3) to a manufacturer, producer, or importer, in the amount of tax paid by him under this chapter with respect to the sale of any article to any vendee, if the manufacturer, producer, or importer has in his possession such evidence as the regulations may prescribe that—

(A) such article was, by any person—

(i) resold for the exclusive use of the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia;

(ii) used or resold for use as fuel supplies, ship's stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions;

(iii) in the case of products embraced in paragraph (2) of section 3412 (c) used or resold for use otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the production of such fuel: *Provided, however,* That no credit or refund shall be allowed or made under this paragraph in the case of sales or uses of products commonly or commercially known or sold as gasoline, including casinghead and natural gasoline;

(iv) in the case of lubricating oils, used or resold for nonlubricating purposes.

(B) The manufacturer, producer, or importer has repaid or agreed to repay the amount of such tax to the ultimate vendor or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

(b) Credit or refund under subsection (a) shall be allowed or made only upon compliance with regulations prescribed by the Commissioner with the approval of the Secretary.

(c) Interest shall be allowed at the rate of 6 per centum per annum with respect to any amount of tax under this chapter credited or refunded, except that no interest shall be allowed with respect to any amount of tax credited or refunded under the provisions of subsection (a) hereof.

(d) No overpayment of tax under this chapter shall be credited or refunded (otherwise than under subsection (a)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund.

§ 314.64 *Credits and refunds.* A credit against the tax due on the sale of any article covered by these regulations or a refund may be allowed or made to a manufacturer in the amount of any tax which has been paid by any person with respect to the sale of any article purchased and used by such manufacturer as material in the manufacture or production of, or as a component part of, any such article with respect to which tax has been paid, or which has been sold free of tax in accordance with the provisions of section 314.21 or 314.22. A claim for refund must be supported by evidence showing (1) the name and address of the person who paid to the United States the tax of which refund is claimed, (2) the date of payment, (3) the amount of such tax, and (4) that the article was so used. A credit taken on a return must be supported by evidence of the same character. If it is impossible to furnish such evidence at the time when the credit is taken, a statement to that effect must be submitted with the return in which the credit is taken. The evidence supporting such credit must be filed with the collector within 30 days after the date on which the return is filed. If the required evidence is not so filed within that period, the amount of the credit will be disallowed and assessment of the tax resulting from the disallowance will be made on the current assessment list.

If any person overpays the tax shown to be due on a monthly return, he may either file a claim for refund on Form 843 or take credit for the overpayment against the tax shown to be due on any subsequent monthly return. In all cases where a person overpays tax, no credit or refund shall be allowed (except as provided in the preceding paragraph), whether in pursuance of a court decision or otherwise, unless the taxpayer files a sworn statement explaining satisfactorily the reason for claiming the credit or refund and establishing (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has either repaid the amount of tax to the ultimate purchaser of the article or has secured the written consent of such ultimate purchaser to the allowance of the credit or refund. In the latter case the written consent of the ultimate purchaser must accompany the sworn statement filed with the credit or refund claim. For the purpose of the tax the "ultimate purchaser" is a person who purchases an article (1) for consumption, or (2) for use in the manufacture of other articles and not for resale in the form in which purchased. The statement supporting the credit or refund claim must also show whether any previous claim for credit

or refund covering the amount involved, or any part thereof, has been filed with the collector or Commissioner.

A complete and detailed record of each overpayment must be kept by the taxpayer for a period of at least four years from the date any credit is taken or refund is claimed.

In the case of a sale of a taxable article by a manufacturer to a dealer, where title passes through one or more persons in a chain of sales from the manufacturer to a consumer, and such article is used, or resold for a purpose or use specified in section 3443 (a) (3) (A)—the manufacturer who paid the tax to the United States may be allowed a refund, or may take credit against the tax shown to be due upon any subsequent monthly return, in the amount of tax paid by him with respect to the sale of such article, provided he can establish by satisfactory evidence (1) that such article has been used, or resold, for one of the uses specified in such section, (2) the name and address of the ultimate vendor, (3) the name and address of the consumer, and the use made or to be made of such article, (4) the date the tax on his sale of such article was paid to the United States, and (5) that he has repaid or agreed to repay the amount of such tax to the ultimate vendor, or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

The evidence required in (1), (2), and (3) of the preceding paragraph may be established by the manufacturer securing from the ultimate vendor (*a*) the original exemption certificate obtained by such ultimate vendor from the consumer, or (*b*) a sworn statement by the ultimate vendor that he has obtained from the consumer and has in his possession such an exemption certificate. The consent of the ultimate vendor required by (5) of the preceding paragraph may be indorsed on the certificate or made a part of the sworn statement.

Where a sworn statement is furnished by the ultimate vendor in lieu of the original exemption certificate, the ultimate vendor must incorporate therein a statement to the effect that the certificate and supporting data (1) are retained by him, (2) will be preserved for a period of four years, and (3) will, upon request, be forwarded to the manufacturer at any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due.

The exemption certificates required by this section shall be in a form substantially the same as those required in the case of sales by manufacturers direct to users.

Where a tax-paid article is used by a consumer for one or more of the purposes specified above, the ultimate vendor may secure from such consumer, in lieu of the exemption certificate, a sworn statement showing full and complete information as to the date of the purchase of the article, from whom purchased, the quantity and nature of the article, the purpose for which used, the amount of tax involved, and that the consumer has not previously executed any other affidavit of use concerning such article. The sworn statement referred to may be furnished to the manufacturer by the ultimate vendor as evidence to support the credit or refund claimed, or the information appearing therein may be incorporated in the affidavit which the ultimate vendor files with the manufacturer who paid the tax to the Government on the sale of the article.

The affidavit of the ultimate vendor shall be in substantially the following form:

AFFIDAVIT OF ULTIMATE VENDOR

_____, being duly sworn, de-
(Name of individual.)
poses and says: that he is the_____
(Title.)
of the _____ or is himself
(Name of company.)
the ultimate vendor of the articles specified below or on the reverse side hereof;

That the articles specified below were purchased by him tax paid and resold for use by his vendee for the nontaxable purposes indicated and not for resale;

That he has in his possession all of the exemption certificates, properly executed, required by the law and regulations, to cover the sale of the articles specified herein;

That the certificates and supporting data (1) are retained by him, (2) will be preserved for a period of four years, and (3) will, upon request, be forwarded to the manufacturer any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due; and

That he hereby consents to the allowance of a credit or refund to the _____
(Name and ad-
_____ in the amount of the tax
dress of manufacturer.)
paid by such manufacturer with respect to the sale of such articles, and that he has not heretofore given his consent to the allowance of a credit or refund to any other manufacturer and has not made application for a refund or credit of such Federal tax from any other source.

The undersigned understands that the fraudulent use of this affidavit to secure credit or refund will subject him and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than 10 years, or both, under section 35 of the Criminal Code of the United States, as amended by Act approved April 4, 1938 (52 Stat., 197).

_____,
(Name.)
_____.
(Address.)

Subscribed and sworn to before me this _____ day of _____, 19__.

Vendor's invoice	Articles	Date of resale	Quantity	Purpose or use	Tax claimed

Where the amount of tax involved in any transaction is $10 or less, any statement herein required may be signed before two witnesses instead of under oath.

The provisions of section 3451 (see section 314.29), relating to aircraft, apply only to sales by manufacturers direct to the owners or operators of aircraft, and no credit or refund is allowable, either under section 3451 or under section 3443 (a) (3) (A) (ii) with respect to tax paid on articles sold by the manufacturer for resale for use on aircraft, regardless of the date the sale or resale occurred, and even though it is known at the time of the manufacturer's sale that the article will be so resold. However, where it can be shown that articles were sold by the manufacturer in accordance with the provisions of section 317 (b) of the Tariff Act of 1930, as added by the Act approved June 25, 1938, for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, the manufacturer who paid the tax to the Government may be allowed a refund or may take credit against the tax due upon any subsequent monthly return, provided he has in his possession the evidence outlined in section 314.29.

No credit will be allowed against tax due on the sale of gasoline or lubricating oil for the tax paid on importation of gasoline or lubricating oil.*†

SEC. 3760. CLOSING AGREEMENTS.

(a) AUTHORIZATION.—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) FINALTY.—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matter agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 3447. CONTRACTS PRIOR TO MAY 1, 1932.

(a) If (1) any person has, prior to May 1, 1932, made a bona fide contract for the sale, after the tax takes effect, of any article in respect of the sale of which a tax is imposed under this chapter, or in respect of which a tax is imposed under this subsection, and (2) such contract does not permit the adding to the amount to be paid under such contract, of the whole of such tax, then (unless the contract prohibits such addition) the vendee shall, in lieu of the vendor, pay so much of the tax as is not so permitted to be added to the contract price. If a contract of the character above described was made with the United States, no tax shall be collected under this chapter. If any article has, under a contract of the character above described, been delivered, prior to June 21, 1932, to any person (other than a dealer or other than a person intending to use the article as material in the manufacture or production of another article, or to sell it on or in connection with, or with the sale of,

another article), no tax shall be collected under this chapter.

(b) The taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated, and shall be collected, returned, and paid to the United States by such vendor in the same manner as provided in section 3467. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

* * * * *

Penalties and Interest

[SEC. 3448. RETURN AND PAYMENT OF MANUFACTURERS' TAXES.]

(b) * * * If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid.

SEC. 3449. APPLICABILITY OF ADMINISTRATIVE PROVISIONS.

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700 shall, insofar as applicable and not inconsistent with this chapter, be applicable in respect of the taxes imposed by this chapter.

SEC. 2711. OTHER LAWS APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter.

[SEC. 3612. RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.]

(d) ADDITIONS TO TAX.

(1) FAILURE TO FILE RETURN. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) FRAUD. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

* * * * *

(e) COLLECTION OF ADDITIONS TO TAX. The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SEC. 3655. NOTICE AND DEMAND FOR TAX.

(a) DELIVERY. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

(b) ADDITION TO TAX FOR NONPAYMENT. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment; except that in the case of income, estate or gift taxes, such penalties shall not apply and the interest for nonpayment of tax shall be such as is specifically provided by law with respect to such taxes.

§ 314.65 *Penalties and interest.* In the case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 per cent if the failure is for not more than 30 days, with an additional 5 per cent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate.

Failure to pay tax within the time fixed for filing returns causes interest to accrue automatically, without assessment of the tax by the Commissioner or notice to the taxpayer, to the actual date of payment or assessment, whichever is prior. The due date of the tax for the purpose of computing interest is the last day of the month within which the return is required to be filed and the tax paid.

Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue, under section 3655, a 5 per cent penalty and interest at the rate of 6 per cent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed at the above-prescribed rates from the date of the first 10-day notice through the date of first payment and on the balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 per cent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 per cent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

If a false or fraudulent return is willfully made, the penalty, under section 3612 (d) and (e), is 50 per cent of the total tax due for the entire period involved, *including any tax previously paid.*

Any person who willfully fails to pay any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, or who fraudulently uses any exemption certificate authorized by these regulations, is subject to a fine of $10,000, or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Code, i. e., pay the tax, make return, keep records, supply information, etc.

An internal-revenue officer discovering in the course of his duty information leading him to suspect a possible violation of any law with the enforcement of which he is not directly concerned should immediately report the matter to the Commissioner, who is authorized to communicate with the proper department involved.*†

SEC. 2707. PENALTIES.

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax imposed by section 2700 (a), or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3710. SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) REQUIREMENT. Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) PENALTY FOR VIOLATION. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceed-

ing the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interests from the date of such levy.

(c) PERSON DEFINED. The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[SEC. 3793. PENALTIES AND FORFEITURES.]

(b) FRAUDULENT RETURNS, AFFIDAVITS, AND CLAIMS.

(1) ASSISTANCE IN PREPARATION OR PRESENTATION. Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) PERSON DEFINED. The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 4047. PENALTIES.

(a) DISCLOSURE OF INFORMATION BY OFFICERS AND EMPLOYEES OF THE UNITED STATES.—

(1) OPERATIONS OF MANUFACTURER OR PRODUCER. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and the offender shall be dismissed from office or discharged from employment. The provisions of this paragraph shall apply to internal revenue agents as fully as to internal revenue officers.

* * * * *

SECTION 35. CRIMINAL CODE OF THE UNITED STATES, AS AMENDED BY THE ACT APPROVED APRIL 4, 1938 (52 STAT., 197)

(A) Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

* * * * *

Penalty for Failure to Register and Give Bond

[SEC. 3412. TAX ON GASOLINE.]

(d) * * * Every person who fails to register or give bond as required by this subsection, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by this subsection, or who willfully makes any false statement in an application for registration under this subsection, shall upon conviction thereof be fined not more than $5,000 or imprisoned not more than five years, or both, together with the costs of prosecution. * * *

Misrepresentation of Tax

SEC. 3325. PENALTIES FOR FALSE STATEMENTS TO PURCHASERS REGARDING TAX.

Whoever in connection with the sale or or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

Fractional Part of Cent

SEC. 3658. FRACTIONAL PARTS OF A CENT.

In the payment of any tax under this title not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Authority for Regulations

SEC. 3450. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter in so far as it relates to the taxes on articles sold by the manufacturer, producer, or importer.

§ 314.66 *Promulgation of regulations.* In pursuance of the provisions of the law, the foregoing regulations are made and promulgated to supersede, as of the date approved, the provisions of Regulations 44, approved September 11, 1934, as amended (Part 309, Title 26, Code of Federal Regulations), as made applicable to the Internal Revenue Code (53 Stat., Part 1) by Treasury Decision 4885, approved February 11, 1939 (Part 465, Subpart B, Title 26, Code of Federal Regulations).*†

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, November 20, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-4309; Filed, November 21, 1939; 12:55 p. m.]

[T. D. 4955]

PART 85—GIFT TAX

ARTICLE 18, REGULATIONS 79, AMENDED; SITUS OF PROPERTY

To Collectors of Internal Revenue and Others Concerned:

The second paragraph of article 18 of Regulations 79, 1936 edition (section 85.18 of Title 26, Code of Federal Regulations), and that article as made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 (Part 465, Subpart B, of such Title 26), is hereby amended to read as follows:

"Real estate, tangible personal property, and the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located. (See section 531 (b).) Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforcible against a resident of the United States or a domestic corporation (public or private), irrespective of where such written evidence is physically located."

(This Treasury Decision is prescribed pursuant to the following sections of law: Sections 1030 (b) and 1029 of the Internal Revenue Code (53 Stat. Part 1); and sections 531 (b) and 530 of the Revenue Act of 1932 (47 Stat. 259; 26 U.S.C. 580, 579))

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, November 20, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-4310; Filed, November 21, 1939; 12:56 p. m.]

[T. D. 4956]

PART 80—ESTATE TAX

ARTICLE 50, REGULATIONS 80 (1937 EDITION) AMENDED; SITUS OF PROPERTY

To Collectors of Internal Revenue and Others Concerned:

Article 50 of Regulations 80,[1] 1937 edition, (section 80.50 of Title 26, Code of Federal Regulations), and that article as made applicable to the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 (Part 465, Subpart B,

[1] 2 F.R. 2364.

of such Title 26), is hereby amended to read as follows:

"ART. 50. *Situs of property.* Real estate, tangible personal property, and the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located.

"Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforcible against a resident of the United States or a domestic corporation (public or private), if not subject to the exception prescribed in section 303 (e). Under the provisions of that section the amount receivable as insurance upon the life of a nonresident decedent (nonresident alien decedent, if death occurred after the enactment of the Revenue Act of 1934), and moneys deposited by or for such a decedent, who was not engaged in business in the United States at the time of his death, with any person carrying on the banking business, shall not be deemed property within the United States.

"Property of which the decedent has made a transfer taxable under the provisions of article 15 is deemed to be situated in the United States if so situated either at the time of the transfer or at the time of the decedent's death. (See articles 15 to 21, inclusive)"

(This Treasury Decision is prescribed pursuant to the following sections of law: Sections 862, 937 and 3791 (a) (1) of the Internal Revenue Code (53 Stat. Part 1); section 303 (d) of the Revenue Act of 1926 (44 Stat. 72), as amended by section 403 (d) of the Revenue Act of 1934 (48 Stat. 753; 26 U.S.C. 462); section 1101 of the Revenue Act of 1926 (44 Stat. 111; 26 U.S.C. 1691); and section 403 of the Revenue Act of 1932 (47 Stat. 245), as amended by section 403 (f) of the Revenue Act of 1934 (48 Stat. 753; 26 U.S.C. 537).)

[SEAL] GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved, November 20, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 39-4311; Filed, November 21, 1939; 12:56 p. m.]

TITLE 36—PARKS AND FORESTS

NATIONAL PARK SERVICE

GRAND TETON NATIONAL PARK

AMENDMENT TO SUBSIDIARY REGULATIONS

Pursuant to the authority granted to the Secretary of the Interior by the Act of August 25, 1916 (39 Stat. 535), and pursuant to the authority granted to the Director of the National Park Service by the Rules and Regulations issued thereunder (1 F.R. 672, 36 CFR, Chapter 1, Part 2, Section 2.43), the subsidiary regulations for Grand Teton National Park, approved October 31, 1938 (3 F.R. 2674 (DI)), are amended to read as follows, to become effective immediately:

§ 20.22 *Grand Teton National Park*—(a) *Speed.* Speed of automobiles and other vehicles, except ambulances and Government cars on emergency trips, is limited to 25 miles per hour on primary roads, and to 15 miles per hour in campground areas.

(b) *Fishing.* (1) The limit of catch per person per day is 10 fish. Possession of more than one day's catch by any person at any one time shall be construed as a violation of this regulation.

(2) The use of fish eggs or fish for bait is prohibited.

Approved, November 15, 1939.

[SEAL] ARNO B. CAMMERER,
Director, National Park Service.

[F. R. Doc. 39-4296; Filed, November 21, 1939; 9:38 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

INTERSTATE COMMERCE COMMISSION

[No. 4844]

EXPORT BILL OF LADING [1]

Upon further hearing certain conditions in Part II of the through export bill of lading heretofore prescribed by the Commission modified in certain particulars in the light of the Carriage of Goods by Sea Act, Public No. 521—74th Congress. Certain other changes also authorized for the reasons stated herein. Prior reports, 64 I. C. C. 347, 66 I. C. C. 687; 80 I. C. C. 305 and 156 I. C. C. 188.

Luther M. Walter, John S. Burchmore, Nuel D. Belnap, E. F. Lacey, and E. S. Gubernator for National Industrial Traffic League.

H. E. Reed and Oscar R. Houston for American Institute of Marine Underwriters, W. G. Oliphant for Inland Waterways Corporation.

Roscoe H. Hupper and James Sinclair for Ocean Carriers in Trans-Atlantic Associated Freight Conferences, and H. B. Bolton for American Hawaiian Steamship Corporation.

A. H. Greenley, D. Lynch Younger and George R. Allen for Bill of Lading Committee, Eastern Group of Rail Lines.

R. C. Fyfe for Bill of Lading Committee, Western Lines, and M. Carter Hall for Chesapeake & Ohio Railway Company.

Julian M. King and Rollin Rice for American Trucking Association, Inc.

Report of the Commission

PORTER, *Commissioner:*

No exceptions were filed to the changes which the examiner recommended be made in the through export bill of lading. However, as hereafter stated, the principal parties are agreed that certain additional changes should be made.

In *Export Bill of Lading*, 64 I.C.C. 347, we prescribed a form of through export bill of lading to be used by carriers subject to the Interstate Commerce Act for application to the transportation of property, in connection with ocean carriers whose vessels are registered under the laws of the United States, from points within the United States designated by us under the provisions of section 25 of the Interstate Commerce Act to points in nonadjacent foreign countries. Certain modifications of this form were subsequently authorized. See 66 I.C.C. 687, 80 I.C.C. 305, and 156 I.C.C. 188.

By section 10 of the Act of Congress, approved April 16, 1936, Public No. 521—74th Congress (Carriage of Goods by Sea Act), section 25, paragraph 4 of the Interstate Commerce Act was amended by adding the following proviso at the end thereof:

Provided, however, That insofar as any bill of lading authorized hereunder relates to the carriage of goods by sea, such bill of lading shall be subject to the provisions of the Carriage of Goods by Sea Act.

On July 6, 1936, we reopened the proceeding for further hearing upon the question of the changes, if any, in the current form of through export bill of lading which might be necessary to bring it into harmony with the provisions of the aforementioned act. At the same time railroads were authorized, pending determination of the question here involved, to make the following endorsement upon through export bills of lading:

This bill of lading, so far as it relates to the carriage of goods by sea, shall have effect subject to provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, effective July 15, 1936.

Hearings were delayed from time to time because the interested parties were endeavoring by conferences to agree upon uniform provisions to be contained in said revised bill of lading.

All parties agree that slight changes or additions should be made in the text of this bill of lading other than in Part II which relates to the service after delivery at the Port (A) as designated in said bill. These changes, which are shown below, appear in the portion immediately following the blocks in which are set forth "Marks and Numbers, Car Numbers, Articles," etc.

To be carried to the port (A) of _____ and thence by _____ to the port (B) _____(or so near thereto as vessel may safely get), *always subject to the liberties, exceptions, terms and conditions here-*

[1] Submitted October 12, 1939; Decided November 7, 1939.

inafter specified or provided for, and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination if consigned beyond said port (B), upon payment immediately on discharge of the property of the freight *due* thereon, at the rate
(INLAND AND/OR COASTWISE) from _____ to _____ of _____ cents per one hundred gross weight, port charges, if any _____ cents, and (Ocean and On-Carrying) from _____ to _____ of _____ cents, per _____, and advanced charges _____ ($_____), with all other charges and average,, without any allowance of credit or discount, _____, settlement to be made on the basis of *lawful money of the* United States *of America,* amount to be paid by receivers at current rate of New York exchange as quoted on the day the vessel is entered at the Custom House at her port of discharge. [Italicized language is new.]

The change first mentioned was said to be desirable so that the bill of lading would contain a recital to the effect that the transportation is subject to the terms and conditions set forth therein. The second should be made because of legislation enacted since the adoption of the present bill of lading. These changes are authorized even though not strictly within the scope of the order of reopening.

The principal changes deemed necessary to comply with the Act were suggested by the National Industrial Traffice League, hereinafter referred to as the league. The American Institute of Marine Underwriters approves such changes. They are set forth in Appendix A, the present and suggested provisions where changes are deemed necessary being set forth in parallel columns. New language is underscored. The Trans-Atlantic carriers in the main do not oppose these changes. All parties are agreed that the changes set forth in Appendix A are such as are required by the Act, and approve them except in minor respects as may be indicated hereafter.

The Trans-Atlantic carriers suggested certain additional changes in paragraphs 2, 3 (a) and 3 (b) but subsequently they adopted the changes suggested by the league as to those paragraphs except that they opposed the insertion of "thirty" in line 13 of 3 (b). This objection is based on the ground that the Carriage of Goods by Sea Act provides that the notice therein required must be given within three days. Paragraph 3 (b) as suggested by the league, if *three* is substituted for *thirty* is approved. This brings the paragraph into harmony with the Act.

The carriers mentioned in the preceding paragraph at the hearing also suggested certain changes in paragraphs 1 (b) and 14 of Part II. These are set forth in Appendix B. The league and the American Institute of Marine Underwriters opposed the approval thereof on the ground that the parties had no notice that any such changes were contemplated and for that reason and the reasons stated in the proposed report the examiner recommended that the changes then suggested be disapproved. However, these three parties have submitted a memorandum stating that with certain revisions, although changes are not required by the Carriage of Goods by Sea Act, they agree that the paragraphs above mentioned should be changed as now proposed, and unanimously recommend our approval thereof. The adoption of such amendments will obviate any objections they now have to the recommendations of the examiner. Such revisions are in addition to those recommended in the proposed report. They differ slightly from those which had been suggested by the Trans-Atlantic carriers. The changes in these paragraphs which the three parties are now agreed should be made are also shown in Appendix B. The additions are underscored and the deletions are stricken with dashes.

The principal objection of the league to the provisions contained in paragraph 1 (b) as proposed by the Trans-Atlantic carriers was that it provided that General Average should be adjusted in accordance with the provisions contained in the port bill of lading of the ocean carrier receiving the goods although the shipper might have no knowledge as to those provisions. The Trans-Atlantic carriers claim that the General Average clause has been found inadequate; that the revision should be made so that the ship owner shall receive General Average and contribute with shippers and owners notwithstanding that the situation which brought about the loss arises out of the negligence of the ship or those who may be operating it. They assert that port bills of lading, similar to those which they propose shall govern General Average, have been in use for some time by various steamship lines including some operated by the United States Maritime Commission and that no objections have been received from any source. It would appear that in our report in 156 I. C. C. 188, we considered a proposal similar in some respects to that here recommended by the Trans-Atlantic carriers. We there said:

> The modification provides that the York-Antwerp rules of 1924 shall govern general average, with the exceptions noted, "unless the port bill of lading of the ocean carrier in use at time of shipment provides for the application of other rules, in which event the latter shall control." This modification, while meeting with the approval of representatives of the steamship lines and railroads, was not approved by counsel for the United States Shipping Board present at the hearing, and it does not have our approval. It is open to the objection that it binds, or seeks to bind, the shipper by reference to the provisions governing general average liability carried in the port-to-port bill of lading of the ocean carrier, which port-to-port bill of lading the shipper possibly never has read, and very likely never has been accorded the opportunity of reading if he so desired. It also would supersede the provisions of the through export bill of lading if in conflict therewith, thereby destroying the uniformity in the terms of that bill of lading, contrary to the intent of the Congress in the enactment of section 25 of the interstate commerce act.

The railroad interests represented at the hearing offered no objection to paragraph 1 (b) as then proposed. The paragraph as revised has been approved by the league, steamship interests, and the Marine Underwriters. No objection has been received from any source. The instant proposal differs somewhat from that considered in 156 I. C. C. 188. It was there provided that "General Average shall be payable according to the York-Antwerp rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive," etc., "unless the port bill of lading of the ocean carrier in use at time of shipment provides for the application of other rules, in which event the latter shall control." As will be noted, it is now proposed to provide that "General Average shall be adjusted and payable according to the provisions therefor contained in the port bill of lading of the ocean carrier receiving the goods hereunder on the date of issuance of this document and then on file with the _____ Commission." Thus the objection to the prior proposal that it would supersede the provisions of the through export bill of lading if in conflict therewith is removed. The provisions of the port bill will govern and the intent of Congress as respects uniformity in the terms of the bill of lading as provided by section 25 of the Interstate Commerce Act would appear to be carried out.

As to the objection in our prior decision that the provision binds or seeks to bind the shipper by reference to provisions carried in the port-to-port bill of lading to which the shipper may never have had access, it should be noted that shippers as represented by the league approve the provision now proposed. The parties to the agreement evidently are in accord that the revised provision meets the objection of uncertainty which was inherent in the clause previously considered in that reference is made to a port lading in use when the through lading is issued and then on file with the designated Commission. Since there was doubt as to the particular Commission with which the port ladings should be filed they left that portion open.

We have been advised by the United States Maritime Commission, which has superseded the United States Shipping Board since our prior decision, that it approves the provision in question. Further it is agreeable to that Commission to have the through export bill of lading provide for the filing of the forms of port bills of lading with it. If such bills are so filed all shippers will have access to and can secure knowledge of the provisions contained therein. This will remove the objection raised in our prior decision. With the insertion of the words "United States Maritime" before the word "Commission" in the revised paragraph 1 (b) as set forth in Appendix B we approve said paragraph.

The Trans-Atlantic carriers on brief suggest that the word "thereunder" in

paragraph 3 (c) of the bill of lading be changed to "hereunder". The present language conforms to the bill as prescribed in our report on further hearing, 66 I. C. C. 687. The changes there approved were suggested by the United States Shipping Board in its letter of February 20, 1922. An examination of the record shows that the word "thereunder" was erroneously used in our report instead of "hereunder". The change suggested is approved.

As previously stated, the Marine Underwriters approved the revisions suggested by the league. The latter, however, opposed the substitute paragraph 14 proposed at the hearing by the Trans-Atlantic carriers on the ground that the port bill would take precedence over the prescribed form of through export bill of lading wherever there was conflict. The marine underwriters also opposed said paragraph unless a slight addition suggested by them were made. However, since the hearing the three parties as heretofore indicated have agreed upon a revised paragraph 14 which they recommend we approve. In that revision, as will be noted, it is provided that the terms and conditions of the port bill "on file with the _____ Commission" will apply only in so far as they are not in conflict with the export bill of lading. Thus the objection that the port bill will control exclusively is removed. Furthermore the United States Maritime Commission has advised that it approves paragraph 14 as revised and agreed upon and is agreeable to having the port bills of lading filed with it. With the insertion of the words "United States Maritime" before the word "Commission" we approve revised paragraph 14.

Accordingly we approve the changes in Part II of the uniform through export bill of lading as proposed by the league and which are set forth in Appendix A[2] except that the use of the word "thirty" in line 13 of paragraph 3 (b) is disapproved for the reasons stated in the report. Certain other changes as mentioned in the report are also approved. Some of them are not included in Part II but all parties are agreed that they should be made. The reasons given justify our approval thereof. We also approve the revised paragraphs 1 (b) and 14 of Part II as set forth in Appendix B[2] with the insertion of the words "United States Maritime". No order will be entered at this time but the carriers and shippers will be expected to make changes in the through export bill of lading as their present supplies become exhausted. Pending that time the railroads may continue to make the indorsement heretofore authorized upon through export bills of lading.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 39-4300; Filed, November 21, 1939; 10:56 a. m.]

[2] Appendix A and Appendix B were filed as a part of the original document with the Division of the Federal Register; requests for copies should be addressed to the Interstate Commerce Commission.

TITLE 50—WILDLIFE

BUREAU OF BIOLOGICAL SURVEY

PART 29—PLAINS REGION: INDIVIDUAL NATIONAL WILDLIFE REFUGES

ORDER PERMITTING FISHING WITHIN THE VALENTINE MIGRATORY WATERFOWL REFUGE, NEBRASKA

§ 29.920 *Order permitting fishing within the Valentine Migratory Waterfowl Refuge, Nebraska.* Pursuant to section 10 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222; 16 U.S.C. 715i), as amended, and to the President's Reorganization Plan No. II, promulgated May 9, 1939, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939 (Pub. No. 19, 76th Cong.) it is hereby ordered that, until further notice, in accordance with the provisions of the regulations dated November 23, 1937,[1] for the administration of national wildlife refuges under the jurisdiction of the Bureau of Biological Survey, fishes may be taken for noncommercial purposes, and by hook and line only, from certain waters of the Valentine Migratory Waterfowl Refuge, Nebraska, subject to conditions and restrictions herein specified.

(1) *Waters open to fishing.* Only the waters of Dads, Dewey, and Hackberry Lakes within the refuge shall be open to fishing insofar as such fishing is not inconsistent with the primary object for which the refuge was established. No fishing of any kind will be permitted within the refuge during the migratory-waterfowl hunting season. In the event that the Chief of the Bureau of Biological Survey shall find that fishing in any of these waters is unduly depleting any species of fishes therein or is interfering with the use of any particular waters by migratory birds or other wildlife, he may suspend the privilege of fishing in such waters pending final determination by the Secretary of the Interior.

(2) *State fishing laws.* Any person who fishes within the refuge must comply with the applicable fishing laws and regulations of the State of Nebraska, and in the absence of a State law or regulation in respect to the fishing season and the number and size of fishes that may be taken, the Chief of the Bureau of Biological Survey may fix such seasons and limits.

[1] 50 CFR 12.2, 12.3; 2 F.R. 2537.

(3) *Fishing permits.* Any person exercising the privilege of fishing within the refuge shall be in possession of a valid fishing license issued by the State of Nebraska, if such license is required, and shall carry such license on his person while fishing, and when requested to do so shall exhibit it to any representative of the Game, Forestation, and Parks Commission of the State of Nebraska authorized to enforce the game and fish laws of the State, or to any representative of the Bureau of Biological Survey.

(4) *Routes of travel.* Persons entering the refuge for the purpose of fishing shall follow such routes of travel as shall from time to time be designated by the officer in charge of the refuge.

(5) *Use of motor boats.* The use of motor boats, either inboard or outboard, is prohibited on all waters of the refuge except for official purposes.

Approved, November 15, 1939.

[SEAL] E. K. BURLEW, *Acting Secretary of the Interior.*

[F. R. Doc. 39-4295; Filed, November 21, 1939; 9:38 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket Nos. 620-FD, 623-FD—626-FD, 667-FD]

IN THE MATTER OF THE APPLICATIONS OF HUBERT POWERS AND E. C. BROCK, TOM CARTER, ALF PARKER, BEN PORTER AND WILLIAM PORTER, CUMBERLAND MOUNTAIN COAL CO., INC. AND CECIL HITCHCOCK, FOR EXEMPTION UNDER THE SECOND PARAGRAPH OF SECTION 4-A OF THE BITUMINOUS COAL ACT OF 1937

NOTICE OF AND ORDER FOR HEARING

Applications, pursuant to the provisions of the second paragraph of Section 4-A of the Bituminous Coal Act of 1937, having been filed with the Bituminous Coal Division by the abovenamed parties:

It is ordered, That hearings on such matters be held on December 5, 1939, at ten o'clock in the forenoon of that day at a hearing room of the Bituminous Coal Division, Room, 245, Federal Building, Nashville, Tennessee.

It is further ordered, That D. C. McCurtain or any other officer or officers of the Bituminous Coal Division designated by the Director thereof for that purpose shall preside at the hearings in such matters. The officer so designated to preside at such hearings is hereby authorized to conduct said hearings separately or to consolidate them, to administer oaths and affirmations, to examine witnesses, subpoena witnesses, compel

their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearings from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of appropriate orders in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearings is hereby given to such Applicants and to any other person who may have an interest in such proceedings. Any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Bituminous Coal Division on or before December 2, 1939.

The matters concerned herewith are in regard to Applications filed by Hubert Powers and E. C. Brook, Tom Carter, Alf Parker, Ben Porter and William Porter, Cumberland Mountain Coal Co., Inc., and Cecil Hitchcock, for exemption pursuant to the second paragraph of Section 4–A of the Bituminous Coal Act of 1937 and to an Order of the Bituminous Coal Commission entered in Docket No. 62–FD, which Order has been adopted and ratified as an Order of the Bituminous Coal Division.

The mine of the Applicants, Hubert Powers and E. C. Brock, is located near Campaign, Warren County, Tennessee, and it is claimed that the coal is consumed in Van Buren County, Warren County, and other nearby counties in Tennessee.

The mine of the Applicant, Tom Carter, is located near Clifty, Cumberland County, Tennessee, and it is claimed that the coal is consumed in Sparta, McMinnville and other nearby towns in Cumberland County and other nearby counties.

The mine of the Applicant, Alf Parker, is located near Clifty, Tennessee, and it is claimed that the coal is consumed in Sparta and Smithville, Tennessee, and in DeKalb County and adjoining counties in Tennessee.

The mine of the Applicants, Ben Porter and William Porter, is located near Eastland, White County, Tennessee, and it is claimed that the coal is consumed in Sparta and Smithville, Tennessee.

The mine of the Applicant, Cumberland Mountain Coal Co., Inc., is located near Spencer, Tennessee, and it is claimed that all coal produced at this mine is consumed locally in intrastate commerce, principally in McMinnville, Murfreesboro, Shelbyville, Woodbury and Tullahoma, and otherwise consumed locally in Van Buren, Warren and adjoining counties in Tennessee.

The mine of the Applicant, Cecil Hitchcock, is located near Lee Station, Tennessee, and it is claimed that the coal is consumed in Pikeville, Bledsoe County, and in other nearby counties in Tennessee.

All Applicants claim that their sales of coal are purely intrastate, and that they do not affect interstate commerce in bituminous coal.

Dated, November 20, 1939.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 39–4305; Filed, November 21, 1939; 12:10 p. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Marketing Service.

[P. & S. Docket No. 450]

IN THE MATTER OF DENVER UNION STOCK YARD COMPANY, RESPONDENT

ORDER AND NOTICE OF HEARING

Whereas the Secretary of Agriculture on the 17th day of February, 1937, issued an order prescribing reasonable rates and charges for the respondent in the above-entitled case, which rates and charges were filed and put into effect in accordance with said order; and

Whereas the respondent on the 23rd day of May, 1939, filed a petition asking for a modification in the rates and charges prescribed by said order, on the ground that certain changes in conditions have taken place since the date thereof:

Now, therefore, *it is ordered*, That P. & S. Docket No. 450 be reopened for the purpose of taking evidence as to changes in conditions which may have occurred since the date of said order affecting said rates and charges, and that the matter be set down for a hearing on the 4th day of December 1939 at the hour of 10 a. m., in Room 3106 South Building, United States Department of Agriculture, Washington, D. C., at which time and place all interested persons will be afforded an opportunity to be heard.

It is further ordered, That a copy of this order and notice of hearing be served upon respondent by registered mail.

Done at Washington, D. C., this 20th day of November 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] M. L. WILSON,
Under Secretary of Agriculture.

[F. R. Doc. 39–4299; Filed, November 21, 1939; 9:45 a. m.]

DIVISION OF MARKETING AND MARKETING AGREEMENTS

DETERMINATION OF THE SECRETARY OF AGRICULTURE, APPROVED BY THE PRESIDENT OF THE UNITED STATES, WITH RESPECT TO AMENDMENTS TO ORDER NO. 22, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CINCINNATI, OHIO, MARKETING AREA

Whereas, the Secretary of the Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, having reason to believe that the execution of amendments to a tentatively approved marketing agreement, as amended, and the issuance of amendments to Order No. 22, as amended, both of which regulate the handling of milk in the Cincinnati, Ohio, marketing area, would tend to effectuate the declared policy of the act, gave, on the 22nd day of September 1939, notice of a public hearing to be held on the 28th day of September 1939, at Cincinnati, Ohio, on proposed amendments to said tentatively approved marketing agreement, as amended, and to said Order No. 22, as amended, which hearing was held on the 28th and 29th days of September 1939, and at said times and place conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the said proposed amendments; and

Whereas, after said hearing and after the tentative approval by the Secretary, on the 4th day of November 1939, of amendments to the marketing agreement, as amended, handlers of more than fifty percent of the volume of milk covered by Order No. 22, as amended, which is marketed within the Cincinnati, Ohio, marketing area, refused or failed to sign such tentatively approved amendments to the marketing agreement, as amended, relating to milk:

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby determines:

1. That the refusal or failure of said handlers to sign said tentatively approved amendments to the marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act;

2. That the issuance of the proposed amendments to Order No. 22, as amended, is the only practical means, pursuant to such policy, of advancing the interests of producers of milk which is produced for sale in said area; and

3. That the issuance of the proposed amendments to Order No. 22, as amended, is approved or favored by over two-thirds of the producers who participated in a referendum conducted by the Secretary, and who, during the month of August 1939, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, has executed this determination in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of

Columbia, this 17th day of November 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

Approved:

FRANKLIN D ROOSEVELT
The President of the United States.

Dated, November 18, 1939.

[F. R. Doc. 39-4308; Filed, November 21, 1939; 12:52 p. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

IN THE MATTER OF APPLICATION OF THE UNITED STATES INDEPENDENT TELEPHONE ASSOCIATION AND SUNDRY OTHER PARTIES

NOTICE OF HEARING

Whereas, applications have been made by the United States Independent Telephone Association and sundry other parties under Section 14 of the Fair Labor Standards Act of 1938, 52 Stat. 1060, and Regulations, Part 522, as amended (Regulations Applicable to the Employment of Learners pursuant to Section 14 of the Fair Labor Standards Act—Title 29, Labor, Chapter V, Wage and Hour Division) issued by the Administrator thereunder for permission to employ learners as switchboard operators in the telephone industry at wages less than the applicable minimum wage specified in Section 6 of the Act;

Now, therefore, pursuant to the said Act and Section 522.4 of the said Regulations, notice is hereby given of a public hearing to be held in Room 3229 Department of Labor Building, Washington, D. C. to commence at 10 A. M. on Thursday, December 7, 1939 before Gustav Peck, Assistant Director of the Hearings Branch of the Wage and Hour Division, hereby duly authorized as presiding officer to conduct said hearing, to take testimony for the purpose of determining, and to determine:

(a) Whether the occupation of switchboard operator in the telephone industry requires a learning period and, if this occupation is found to require a learning period,

(b) the factors which may have a bearing upon curtailment of opportunities for employment in the occupation of switchboard operator in the telephone industry, and,

(c) under what limitations as to wages, time, number, proportion, and length of service special certificates may be issued for the employment of switchboard operators in the telephone industry.

At this hearing opportunity to present evidence relevant to above questions will be afforded any interested person provided the presiding officer shall have received from such person, prior to noon, Tuesday, December 5, 1939, a notice of intention to appear setting forth his name and address, the company or organization which he represents, and the approximate length of such presentation.

As used in this notice, the term "switchboard operator in the telephone industry" means any switchboard operator employed in a public telephone exchange which has five hundred stations or more.

Signed at Washington, D. C., this 21st day of November 1939.

HAROLD D. JACOBS,
Acting Administrator.

[F. R. Doc. 39-4302; Filed, November 21, 1939; 11:32 a. m.]

APPLICATIONS OF RAW FUR AND WOOL ASSOCIATION OF ST. LOUIS, MISSOURI, INC. AND SUNDRY OTHER PARTIES FOR PARTIAL EXEMPTION OF THE RAW FUR RECEIVING INDUSTRY AS A SEASONAL INDUSTRY

NOTICE OF FURTHER CHANGE IN DATE OF HEARING

Whereas on the 10th day of January, 1939, Notice of Hearing on the applications of Raw Fur and Wool Association of St. Louis, Missouri, Inc., and sundry other parties for partial exemption of the raw fur receiving industry as a seasonal industry pursuant to Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526 of regulations issued thereunder, was duly issued by Elmer F. Andrews, Administrator, Wage and Hour Division, United States Department of Labor, to commence on January 19, 1939, at 10 o'clock a. m., at the Raleigh Hotel, Twelfth Street and Pennsylvania Avenue, Washington, D. C., before a presiding officer to be designated, on the following question:

Whether or not the raw fur receiving industry as defined herein or any branch thereof is of a seasonal nature within the meaning of Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526 of regulations issued thereunder. As used in this notice the term "raw fur receiving industry" means the receiving, unpacking, grading, sorting, appraising, scraping, stretching and drying of raw furs.

and

Whereas the said Hearing has heretofore been duly postponed until further notice,

Now take notice that the said Hearing will be held at 10:00 a. m., on December 7, 1939, at the Raleigh Hotel, Washington, D. C., before Harold Stein, who is hereby designated Presiding Officer to determine the question set forth above.

Any person interested in supporting or opposing the above application may appear at the hearing or file a written statement in lieu of appearance. Notice of intention to appear and written statements should be received by the said Harold Stein, Wage and Hour Division, Department of Labor, Washington, D. C. not later than December 6, 1939.

Signed at Washington, D. C., this 21st day of November 1939.

HAROLD D. JACOBS,
Acting Administrator.

[F. R. Doc. 39-4303; Filed, November 21, 1939; 11:32 a. m.]

IN THE MATTER OF MINIMUM WAGE RECOMMENDATION OF INDUSTRY COMMITTEE NO. 6 FOR THE SHOE MANUFACTURING AND ALLIED INDUSTRIES

NOTICE OF HEARING

Whereas, the Administrator of the Wage and Hour Division of the United States Department of Labor, acting pursuant to Section 5 (b) of the Fair Labor Standards Act of 1938, on March 16, 1939, by Administrative Order No. 18, appointed Industry Committee No. 6 for the Shoe Manufacturing and Allied Industries, composed of an equal number of representatives of the public, employers in the industries and employees in the industries, such representatives having been appointed with due regard to the geographical region in which the industries are carried on; and

Whereas, Industry Committee No. 6, on August 3, 1939, recommended minimum wage rates for the Shoe Manufacturing and Allied Industries and has thereafter duly adopted a report containing said recommendation and reason therefor and has filed such report with the Administrator on November 20, 1939, pursuant to Section 8 (d) of the Act and Section 511.19 of the Regulations issued under the Act; and

Whereas, the Administrator is required by Section 8 (d) of the Act, after due notice to interested persons and giving them an opportunity to be heard, to approve and carry into effect by order the recommendation of Industry Committee No. 6 if he finds that the recommendation is made in accordance with law and is supported by the evidence adduced at the hearing before him, and, taking into consideration the same factors as are required to be considered by the Industry Committee, will carry out the purposes of Section 8 of the Act; and, if he finds otherwise, to disapprove such recommendation;

Now, therefore, notice is hereby given that:

I. The recommendation of Industry Committee No. 6 is as follows:

"That 35 cents be recommended to the Administrator as the minimum wage for the Shoe Manufacturing and Allied Industries as defined in Administrative Order No. 18, and that no classifications be established."

II. The definition of the Shoe Manufacturing and Allied Industries, as set forth in Administrative Order No. 18, issued March 16, 1939, is as follows:

"(a) The manufacture or partial manufacture of footwear from any material and by any process except knitting, vulcanizing of the entire article or vulcanizing (as distinct from cementing) of the sole to the upper.

"(b) The manufacture or partial manufacture of the following types of footwear, subject to the limitations of paragraph (a) but without prejudice to the generality of that paragraph:

"Athletic shoes
"Boots
"Boot tops
"Burial shoes
"Custom-made boots or shoes
"Moccasins
"Puttees, except spiral puttees
"Sandals
"Shoes completely rebuilt in a shoe factory
"Slippers

"(c) The manufacture from leather or from any shoe-upper material of all cut stock and findings for footwear, including bows, ornaments and trimmings.

"(d) The manufacture of the following types of cut stock and findings for footwear from any material except from rubber or composition of rubber, molded to shape:

Outsoles	Shanks
Midsoles	Boxtoes
Insoles	Counters
Taps	Stays
Lifts	Stripping
Rands	Sock linings
Toplifts	Heel pads
Bases	

"(e) The manufacture of heels of any material except molded rubber, but not including the manufacture of wood-heel blocks.

"(f) The manufacture of cut upper parts for footwear, including linings, vamps and quarters.

"(g) The manufacture of pasted shoe stock.

"(h) The manufacture of boot and shoe patterns."

III. The full text of the report and recommendation of Industry Committee No. 6 is available for inspection by any person between the hours of 9:00 a. m. and 4:30 p. m. at the following places:

Boston, Massachusetts, 120 Boylston Street.

New York, New York, 412 Federal Building, 641 Washington Street.

Philadelphia, Pennsylvania, 1630 Widener Building.

Pittsburgh, Pennsylvania, 216 Old Post Office Building.

Newark, New Jersey, 1004 Kinney Building, 790 Broad Street.

Cleveland, Ohio, 728 Standard Building, 1370 Ontario Avenue.

Cincinnati, Ohio, 421 Keith Building, 525 Walnut Street.

Detroit, Michigan, 358 Federal Building.

Chicago, Illinois, 955 Merchandise Mart.

Indianapolis, Indiana, 708 Railway Exchange Building.

Richmond, Virginia, 215 Richmond Trust Building.

Baltimore, Maryland, Snow Building, 6th Floor, Calvert & Lombard Streets.

Washington, District of Columbia, Department of Labor, 5th Floor.

Atlanta, Georgia, 314 Witt Building, 249 Peachtree Street.

Birmingham, Alabama, 818 Comer Building.

Jacksonville, Florida, 225 Post Office Building.

Charlotte, North Carolina, 409 Johnston Building, 212 South Tryon Street.

Nashville, Tennessee, 119 Seventh Avenue, North.

St. Louis, Missouri, 314 Old Custom House Building, 815 Olive Street.

Kansas City, Missouri, 504 Title & Trust Building.

Minneapolis, Minnesota, 406 New Post Office Building.

Denver, Colorado, 106 Old Custom House Building.

Dallas, Texas, 618-621 Wilson Building.

San Antonio, Texas, 716 Maverick Building.

New Orleans, Louisiana, 516 Carondelet Building.

San Francisco, California, 785 Market Street.

San Juan, Puerto Rico, Box 1431 Post Office.

Juneau, Alaska, B. D. Stewart, Commissioner of Mines.

Copies of the Committee's report and recommendation may be obtained by any person upon request addressed to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C.

IV. A public hearing for the purpose of taking evidence on the question of whether the recommendation of Industry Committee No. 6 shall be approved or disapproved pursuant to Section 8 of the Act will be held on December 11, 1939, at 10:00 a. m. in the Raleigh Hotel, Washington, D. C., before a presiding officer to be designated prior to such hearing by the Administrator of the Wage and Hour Division, United States Department of Labor.

V. Any interested person, supporting or opposing the recommendation of Industry Committee No. 6, may appear at the aforesaid hearing to offer evidence, either on his own behalf or on behalf of any other person; provided, that not later than December 7, 1939, such person shall file with the Administrator at Washington, D. C., a notice of his intent to appear which shall contain the following information:

1. The name and address of the person appearing.

2. If such person is appearing in a representative capacity, the name and address of the person or persons whom he is representing.

3. Whether such person proposes to appear for or against the recommendation of Industry Committee No. 6.

4. The approximate length of time requested for his presentation.

Such notice may be mailed to the Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C., and shall be deemed filed upon receipt thereof.

VI. The hearing will be conducted in accordance with the following rules, subject, however, to such subsequent modifications by the Administrator or the presiding officer as are deemed appropriate:

1. The hearing shall be stenographically reported and a transcript made which will be available to any person at prescribed rates upon request made to the official reporter.

2. In order to maintain orderly and expeditious procedure each person filing a Notice to Appear will be notified of the approximate day and the place at which he may offer evidence at the hearing. If such person does not appear at the time set in the notice he will not be permitted to offer evidence at any other time except by special permission of the presiding officer.

3. At the discretion of the presiding officer the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the presiding officer, or by other appropriate notice.

4. The Industry Committee will be represented at the hearing by its counsel who will open and close the proceeding.

5. At any stage of the hearing, the presiding officer may call for further evidence upon any matter. After the presiding officer has closed the hearing before him, no further evidence shall be taken, except at the request of the Administrator, unless provision has been made at the hearing for the later receipt of such evidence. In the event that the Administrator shall cause the hearing to be reopened for the purpose of receiving further evidence, due and reasonable notice of the time and place fixed for such further taking of testimony shall be given to all persons who have filed a notice of intention to appear at the hearing.

6. All evidence must be presented under oath or affirmation.

7. Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibit, make a brief statement as to the contents and manner of preparation thereof.

8. Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such

are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the presiding officer the original document together with two copies of those portions of the document intended to be put in evidence. Upon presentation of such copies in proper form the copies will be received in evidence.

9. Subpoenas requiring the attendance of witnesses or the presentation of documents from any place in the United States at any designated place of hearing may be issued by the Administrator at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the Administrator of the subpoena. Such applications shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

10. Witnesses summoned by the Administrator shall be paid the same fees and mileage as are paid witnesses in the Courts of the United States. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the Administrator before issuing subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

11. The rules of evidence prevailing in courts of law or equity shall not be controlling.

12. The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person insofar as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or the ground of objection relied on. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer.

13. Before the close of the hearing the presiding officer shall receive written requests from persons appearing in the proceeding for permission to make oral arguments before the Administrator upon the matter in issue. These requests will be forwarded to the Administrator by the presiding officer with the record of the proceedings. If the Administrator, in his discretion, allows the requests, he shall give such notice thereof as he deems suitable to all persons appearing in the proceeding, and shall designate the time and place at which the oral argument shall be heard. If such requests are allowed, all persons appearing at the hearing will be given opportunity to present oral argument.

14. Briefs may be submitted to the Administrator, following the close of the hearing, by any persons appearing therein. Notice of the final dates for filing such briefs and the rules and regulations as to the contents and manner of presentation thereof, shall be given by the Administrator in such manner as shall be deemed suitable by him.

15. On the close of the hearing the presiding officer shall forthwith file a complete record of the proceedings with the Administrator. The presiding officer shall not file an intermediate report unless so directed by the Administrator. If a report is filed, it shall be advisory only and have no binding effect upon the Administrator.

16. No order issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the FEDERAL REGISTER.

Signed at Washington, D. C., this 21st day of November 1939.

HAROLD D. JACOBS,
Acting Administrator.

[F. R. Doc. 39-4304; Filed, November 21, 1939; 11:32 a. m.]

FEDERAL POWER COMMISSION.

[Project No. 271]

IN THE MATTER OF ARKANSAS POWER & LIGHT COMPANY

ORDER FIXING DATE OF HEARING

NOVEMBER, 17, 1939.

Commissioners: Clyde L. Seavey, Chairman; Claude L. Draper, Basil Manly, Leland Olds, John W. Scott.

It appearing to the Commission that:

(a) On November 14, 1939, Arkansas Power & Light Company, as licensee for Project No. 271, filed an amended application for further amendment of the license for said project, filing with said application an amended Exhibit, designated as "Exhibit L2–Sheet 1," intended to supersede Exhibit L, Sheet 7, relating to the Blakely Dam, and requesting amendment of the license for indefinite postponement of the completion date for the Blakely development;

(b) A preliminary permit was issued on April 21, 1922, to the Caddo River Power & Irrigation Company for Project No. 271 as a comprehensive power project consisting of three separate developments on the Ouachita River in Arkansas, the Carpenter, Remmell and Blakely developments; on February 7, 1923, a license was issued for the comprehensive project pursuant to the terms of the permit, and on April 14, 1923, the license was transferred to Arkansas Light & Power Company and on February 1, 1927, to the present licensee;

(c) The license as amended requires that the licensee commence construction of the Blakely development by December 31, 1936, and complete the construction by December 31, 1939;

(d) The license for Project No. 271, as amended November 16, 1928, contemplated the construction of a reservoir at the Blakely site for the development of hydroelectric power and in the interests of navigation and flood control;

(e) For the purposes of preventing or controlling floods and of facilitating navigation on the Ouachita River, participation by the United States in the cost of construction of the Blakely development was authorized by Section 4 of the Flood Control Act approved June 28, 1938, 33 U.S.C. 701, such participation not to exceed the sum of $2,000,000;

(f) Under Section 7 (b) of the Federal Power Act, the Commission may in its judgment make findings as to the development of water resources by the United States;

(g) The said Exhibit L2—Sheet 1 filed by the licensee on November 14, 1939, does not constitute full and proper compliance with the Commission's Rules of Practice and Regulations, Section 4.41, page 25, for the filing of Exhibit L, "general design drawings" etc.; and

(h) Under the circumstances further delay in the construction of the Blakely development may not be compatible with the public interests;

The Commission *orders* that:

A public hearing be held beginning at 10:00 o'clock a. m., on December 18, 1939, in the Hearing Room of the Federal Power Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., at which the licensee shall submit appropriate evidence upon the following matters:

(1) The application for indefinite postponement of the date of completion of the Blakely development;

(2) The actual construction work which has already been accomplished at the Blakely site, its extent, character and cost;

(3) The suitability of foundation conditions at the Blakely site for the dam which the licensee proposes to construct;

(4) The proposed method of operation of the Blakely Power Plant as a part of the licensee's power system;

(5) The reasonable needs, present and prospective, of the available market to be served by the Blakely development;

(6) The sources in its own system from which the licensee now obtains electric energy and the possible future sources of such energy;

(7) The sources outside of its own system from which the licensee now obtains electric energy and the possibility of continued supply from such outside sources in the future;

At such public hearing, interested parties may present appropriate evidence upon the matters specified above, and

upon the following matters, which will also be considered by the Commission:

(a) The desirability of constructing a multiple-purpose development at the Blakely site serving the purposes of flood control, power development, and navigation;

(b) The desirability of the construction by the United States or by a public agency of a multiple-purpose reservoir project at the Blakely site;

(c) The desirability of submitting a report to Congress upon a development at the Blakely site for public purposes;

(d) The desirability of revocation of that part of the license for Project No. 271, which authorizes construction, operation and maintenance of the Blakely development.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 39-4294; Filed, November 21, 1939; 9:38 a. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 17th day of November, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[File No. 21-343]

IN THE MATTER OF PROPOSED TRADE PRACTICE RULES FOR THE UMBRELLA INDUSTRY

NOTICE OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS OR OBJECTIONS

This matter now being before the Federal Trade Commission under its trade practice conference procedure, in pursuance of the Act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), or other applicable provisions of law administered by the Commission;

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, partnerships, corporations, associations, groups or other parties affected by or having an interest in the proposed trade practice rules for the Umbrella Industry to present to the Commission, orally or in writing, their views concerning such rules, including such pertinent information, suggestions or objections, if any, as they desire to submit. For this purpose they may, upon application to the Commission, obtain copies of the proposed rules. Written communications of such matters should be filed with the Commission not later than December 7, 1939. Opportunity for oral hearing and presentation will be afforded at 10 a. m., December 7, 1939, in Room 332, Federal Trade Commission Building, Constitution Avenue at Sixth Street, Washington, D. C., to any such persons, partnerships, corporations, associations, groups or other parties as may desire to appear and be heard. After giving due consideration to all matters submitted concerning the proposed rules, the Commission will proceed to their final consideration.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-4298; Filed, November 21, 1939; 9:41 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of November, A. D. 1939

[FILE NO. 46-190]

IN THE MATTER OF NORTH WEST UTILITIES COMPANY AND LAKE SUPERIOR DISTRICT POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

A declaration and an application pursuant to sections 7 and 10 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named parties;

It is ordered, That a hearing on such matter be held on December 8, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before December 2, 1939.

The matter concerned herewith is in regard to the issue and sale by Lake Superior District Power Company of 5,000 shares ($75 par value) of common stock and the acquisition of such stock at its par value by North West Utilities Company, 1,334 shares to be acquired prior to December 31, 1939 and the remaining 3,666 shares to be acquired from time to time within the next eighteen months thereafter.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-4301; Filed, November 21, 1939; 11:01 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of November, A. D. 1939.

[File No. 32-187]

IN THE MATTER OF POTOMAC ELECTRIC POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered That a hearing on such matter be held on December 11, 1939, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Lobingier or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall

file a notice to that effect with the Commission on or before December 6, 1939.

The matter concerned herewith is in regard to the application of Potomac Electric Power Company, a public utility company and a direct subsidiary of Washington Railway and Electric Company, a registered holding company, and an indirect subsidiary of The North American Company, a registered holding company, for an order, pursuant to Section 6 (b) of said Act, exempting from the requirements of Section 6 (a) of said Act, the proposed issue and sale by said applicant of its First Mortgage Bonds, 3¼% Series, in the principal amount of $5,000,000 to a limited number of private purchasers at a price to be supplied by amendment to said application.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-4306; Filed, November 21, 1939; 12:29 p. m.]